

# TOWN OF FAIRFAX



## CONTRACT AND BID DOCUMENTS FOR

**ROADWAY STABILIZATION  
378 SCENIC ROAD AND 78 WREDEN AVE.**

**CONTRACT NO. 51-813**

**8/10/2022**

**TOWN OF FAIRFAX  
Public Works Department  
142 Bolinas Road  
Fairfax, CA 94930**



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## 00 11 16 – NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the Town of Fairfax, with its principal place of business at 142 Bolinas Road, Fairfax, California 94930 ("Town") invites and will receive sealed bids ("Bids") up to but not later than **2 p.m. on Thursday, September 1, 2022** at the Office of the Town Clerk, located at 142 Bolinas Road, Fairfax, California 94930, for the furnishing to Town of all labor, equipment, materials, tools, services, transportation, permits, utilities, and all other items necessary for the Roadway Stabilization work at 378 Scenic Road and 78 Wreden Avenue ("Project"). At said time, Bids will be publicly opened and read aloud. Bids received after said time shall be returned unopened. Bids shall be valid for a period of 90 calendar days after the bid opening date. The Engineer's Estimate for this project is \$400,000.

The portion of the Project at 378 Scenic Road includes constructing a new reinforced concrete wall will be constructed to repair a small landslide that occurred along a relatively steep cut slope on the inboard side of the roadway. The reinforced concrete retaining wall will be up to about 35-foot-long, 8-foot-tall and will be supported on a continuous spread footing. The wall alignment will be configured as to provide an eight-foot-wide paved parking space adjacent to the structure. The wall will be backfilled with rip rap and the slope on either end of the structure will be trimmed to reduce the risk of future raveling.

At 78 Wreden Avenue, a new reinforced concrete wall will be constructed to support an existing undermined concrete wall along the downslope side of the roadway near the intersection with Manzanita Avenue. The retaining wall will be approximately 41-foot-long, up to 8-foot-tall and will be supported on a drilled pier foundation system. The new wall will be constructed a few feet downslope of the existing concrete wall and the area between the new and existing wall will be backfilled. The existing concrete culvert which terminates at the face of the existing concrete wall will be replaced and extended through the new wall to discharge into a new dissipator on the slope below.

Bids must be submitted on Town's Bid Forms. Bidders may obtain an electronic copy of the Contract Documents from Miller Pacific Engineering Group by email at [mjewett@millerpac.com](mailto:mjewett@millerpac.com) or 707-765-6140. Printed copies of the Contract Documents may be obtained from Miller Pacific Engineering Group at 504 Redwood Boulevard, Novato, California for Thirty Dollars (\$30.00). A non-refundable charge of Twenty Dollars (\$20.00) will be required of any bidder who requests that the Contract Documents be mailed within California (costs for out-of-state mailings will be higher). To the extent required by section 20103.7 of the Public Contract Code, upon request from a contractor plan room service, Town shall provide an electronic copy of the Contract Documents at no charge to the contractor plan room.

Bidders may also obtain a copy of the Contract Documents from:

<https://www.townoffairfax.org/requests-for-proposals-and-bids/>

It is the responsibility of each prospective Bidder to download and print all Contract Documents for review and to verify the completeness of Contract Documents before submitting a bid. Any addenda will be posted at:

<https://www.townoffairfax.org/requests-for-proposals-and-bids/>

It is the responsibility of each prospective Bidder to check on a daily basis through the close of receiving bids for any applicable addenda or updates. Town does not assume any liability or

responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the Contract Documents. Information on Town's web site may change without notice to prospective Bidders. The Contract Documents shall supersede any information posted or transmitted by <https://www.townoffairfax.org/requests-for-proposals-and-bids/>

Each Bid shall be accompanied by cash, a certified or cashier's check, or bid bond secured from a surety company satisfactory to the Town, the amount of which shall not be less than ten percent (10%) of the submitted Total Bid Price, made payable to Town as bid security. The bid security shall be provided as a guarantee that within ten (10) days after Town provides the successful Bidder the Notice of Award, the successful Bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful Bidder fails to comply within said time. No interest will be paid on funds deposited with Town.

A non-mandatory Pre-Bid Conference is scheduled for Thursday, August 25, 2022 at 10 a.m. to review the Project's existing conditions at 378 Scenic Road and 78 Wreden Avenue. Representatives of Town and consulting engineers, if any, will be present.

The successful Bidder will be required to furnish a faithful performance bond and a labor and material payment bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be in the forms set forth herein, shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer.

Pursuant to Section 22300 of the Public Contract Code of the State of California, the successful Bidder may substitute certain securities for funds withheld by Town to ensure its performance under the Contract.

Pursuant to Labor Code Section 1773, Town has obtained the prevailing rate of per diem wages and the prevailing wage rate for holiday and overtime work applicable in Marin County from the Director of the Department of Industrial Relations for each craft, classification, or type of worker needed to execute this contract. A copy of these prevailing wage rates may be obtained via the internet at: [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/)

In addition, a copy of the prevailing rate of per diem wages is available at Town's Department of Public Works and shall be made available to interested parties upon request. The successful Bidder shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the Bidder to whom the Contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the Contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No Bid will be accepted nor any Contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work

performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In bidding on this Project, it shall be the Bidder's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and applicable law in its Bid.

In accordance with California Public Contract Code Section 3300, a valid Class A California contractor's license is required to bid on the project and to perform work on the project for the duration of the Contract.

Substitution requests shall be made within 35 calendar days after the award of the Contract. Pursuant to Public Contract Code Section 3400(b), Town may make findings designating that certain additional materials, methods or services by specific brand or trade name other than those listed in the Contract Documents be used for the Project. Such findings, if any, as well as the materials, methods or services and their specific brand or trade names that must be used for the Project may be found in the Special Conditions.

Pursuant to Public Contract Code section 7201, a retention of 5% will be withheld from payment until after the work is complete.

Town shall award the contract for the Project to the lowest responsive, responsible Bidder as determined by Town from the Base Bid. Town reserves the right to reject any or all Bids or to waive any irregularities or informalities in any Bids or in the bidding process.

For further information, contact Mike Jewett, Senior Geologist (Miller Pacific Engineering Group) at [mjewett@millerpac.com](mailto:mjewett@millerpac.com) or at 707-765-6140.

**END OF NOTICE INVITING BIDS**



## **00 21 13 – INSTRUCTIONS TO BIDDERS**

### **ARTICLE 1. SECURING DOCUMENTS**

Bids must be submitted to Town on the Bid Forms which are a part of the Contract Documents for the Project. Contract Documents may be obtained as specified in the Notice Inviting Bids. Prospective Bidders are encouraged to telephone in advance to determine the availability of Contract Documents. Any charge for the Contract Documents is stated in the Notice Inviting Bids.

Town may also make the Contract Documents available for review at one or more plan rooms, as indicated in the Notice Inviting Bids. Please Note: Prospective Bidders who choose to review the Contract Documents at a plan room must contact Town to obtain the required Contract Documents if they decide to submit a Bid for the Project.

### **ARTICLE 2. EXAMINATION OF SITE AND CONTRACT DOCUMENTS**

At its own expense and prior to submitting its Bid, each Bidder shall visit the site of the proposed work and fully acquaint itself with the conditions relating to the construction and labor required so that the Bidder may fully understand the work, including but not limited to difficulties and restrictions attending the execution of the work under the Contract. Each Bidder shall carefully examine the Drawings, and shall read the Specifications, Contract, and all other documents referenced herein and made part of the Contract Documents. Each Bidder shall also determine the local conditions which may in any way affect the performance of the work, including local tax structure, contractors' licensing requirements, availability of required insurance, the prevailing wages and other relevant cost factors, shall familiarize itself with all federal, state and local laws, ordinances, rules, regulations and codes affecting the performance of the work, including the cost of permits and licenses required for the work, and shall make such surveys and investigations, including investigations of subsurface or latent physical conditions at the site or where work is to be performed as may be required. Bidders are responsible for consulting the standards referenced in the Contract Documents. The failure or omission of any Bidder to receive or examine the Contract Documents, forms, instruments, addenda, or other documents, or to visit the site and acquaint itself with conditions there existing shall in no way relieve any Bidder from any obligation with respect to its Bid or to the Contract and no relief for error or omission will be given except as required under state law. The submission of a Bid shall be taken as conclusive evidence of compliance with this Article.

### **ARTICLE 3. INTERPRETATION OF DRAWINGS AND DOCUMENTS**

Prospective Bidders unclear as to the true meaning of any part of the Drawings, Specifications or other Contract Documents may submit a written request for interpretation. The prospective Bidder submitting the request is responsible for prompt delivery. Interpretation of the Drawings, Specifications or other Contract Documents will be made only by a written addendum duly issued and a copy of such addenda will be mailed or delivered to each prospective Bidder who has purchased a set of Contract Documents. The Town will not be responsible for any other explanation or interpretations of the Contract Documents. If a prospective Bidders becomes aware of any errors or omissions in any part of the Contract Documents, it is the obligation of the prospective Bidder to promptly bring it to the attention of the Town.

### **ARTICLE 4. PRE-BID CONFERENCE**

A non-mandatory Pre-Bid Conference is scheduled for Thursday, August 25, 2022 at 10 a.m. to

review the Project's existing conditions at 378 Scenic Road and 78 Wreden Avenue. Representatives of the Town and consulting engineers, if any, will be present. Oral statements regarding this Bid at the Pre-Bid Conference should be considered unverified information unless confirmed in writing.

#### **ARTICLE 5. ADDENDA**

The Town reserves the right to revise the Contract Documents prior to the bid opening date. Revisions, if any, shall be made by written addenda. All addenda issued by the Town shall be made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the Town issues an addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of Bids, the Town will extend the deadline for submission of Bids. The Town may determine, in its sole discretion, whether an addendum warrants postponement of the Bid submission date. Each prospective Bidder shall provide the Town a name, address, email address, and facsimile number to which addenda may be sent, as well as a telephone number by which the Town can contact the Bidder. Copies of addenda will be furnished by email, facsimile, first class mail, express mail or other proper means of delivery without charge to all parties who have obtained a copy of the Contract Documents and provided such current information. Please Note: Bidders are responsible for ensuring that they have received any and all addenda. To this end, each Bidder should contact Mike Jewett, Senior Geologist (Miller Pacific Engineering Group) at [mjewett@millerpac.com](mailto:mjewett@millerpac.com) or at 707-765-6140 to verify that it has received all addenda issued, if any, prior to the Bid opening. The Bidder shall indicate the addenda received prior to bidding in the space provided in the Bid Forms. Failure to indicate all Addenda may be sufficient cause for rejecting the Bid.

#### **ARTICLE 6. ALTERNATE BIDS**

If alternate bid items are called for in the Contract Documents, the time required for completion of the alternate bid items has already been factored into the Contract duration and no additional Contract time will be awarded for any of the alternate bid items. The Town may elect to include one or more of the alternate bid items, or to otherwise remove certain work from the Project scope of work. Accordingly, each Bidder must ensure that each bid item contains a proportionate share of profit, overhead, and other costs or expenses which will be incurred by the Bidder.

#### **ARTICLE 7. COMPLETION OF BID FORMS**

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute Bid Forms other than clear and correct photocopies of those provided by the Town will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable), and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. Use of black or blue ink, indelible pencil, or a typewriter is required. Deviations in the Bid Forms may result in the Bid being deemed non-responsive.

#### **ARTICLE 8. MODIFICATIONS OF BIDS**

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders

shall not delete, modify, or supplement the printed matter on the Bid Forms, or make substitutions thereon. Oral, telephonic and electronic modifications will not be considered.

## **ARTICLE 9. SUBCONTRACTORS**

Bidder shall set forth the name, address of the place of business, contractor license number, and public works contractor registration number of each subcontractor who will perform work, labor, furnish materials or render services to the bidder on said contract and each subcontractor licensed by the State of California who, under subcontract to bidder, specially fabricates and installs a portion of the work described in the Contract Documents in an amount in excess of one half of one percent (0.5%) of the total bid price, and shall indicate the portion of the work to be done by such subcontractor in accordance with Public Contract Code section 4104. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price or \$10,000, whichever is greater. If a Bidder fails to specify a subcontractor or if a Bidder specifies more than one subcontractor for the same portion of work, then the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself. Substitution of listed subcontractors shall only be permitted in accordance with Public Contract Code section 4107.

## **ARTICLE 10. LICENSING REQUIREMENTS**

Pursuant to Business and Professions Code Section 7028.15 and Public Contract Code Section 3300, all Bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Business and Professions Code Section 7028.5, the Town shall consider any Bid submitted by a Bidder not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the Town shall reject the Bid. The Town shall have the right to request, and Bidders shall provide within ten (10) calendar days, evidence satisfactory to the Town of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract.

Notwithstanding anything contained herein, if the Project involves federal funds, the Contractor shall be properly licensed by the time the Contract is awarded, pursuant to the provisions of Public Contract Code section 20103.5.

## **ARTICLE 11. BID SECURITY (BOND)**

Each Bid shall be accompanied by: (a) cash; (b) a certified or cashier's check made payable to the Town; or (c) a bid bond secured from a surety company satisfactory to the Town, the amount of which shall not be less than ten percent (10%) of the Total Bid Price, made payable to the Town as bid security. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The bid security shall be provided as a guarantee that within ten (10) calendar days after the Town provides the successful Bidder the Notice of Award, the successful Bidder will enter into a Contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful Bidder fails to comply within said time, and the Town may enter into a Contract with the next lowest responsible bidder providing a responsive bid, or may call for new bids. No interest shall be paid on funds deposited with the Town. The

Town will return the security accompanying the Bids of all unsuccessful Bidders no later than sixty (60) calendar days after award of the Contract.

#### **ARTICLE 12. IRAN CONTRACTING ACT OF 2010**

In accordance with Public Contract Code Section 2200 *et seq.*, the Town requires that any person that submits a Bid with the Town of one million dollars (\$1,000,000) or more, certify at the time the Bid is submitted that the person is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

The form of such Iran Contracting Certificate is included with the Bid Forms and must be signed and dated under penalty of perjury.

#### **ARTICLE 13. NONCOLLUSION DECLARATION**

Bidders on all public works contracts are required to submit a declaration of noncollusion with their Bid. This form is included with the Bid Forms and must be signed and dated under penalty of perjury.

#### **ARTICLE 14. PUBLIC WORKS CONTRACTOR DIR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No Bid will be accepted nor any Contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the successful Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. To this end, Bidder shall sign and submit with its Bid the Public Works Contractor DIR Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the Bid non-responsive. In addition, each Bidder shall provide the registration number for each listed subcontractor in the space provided in the Designation of Subcontractors form.

#### **ARTICLE 15. BIDDER INFORMATION AND EXPERIENCE FORM**

Each Bidder shall complete the questionnaire provided herein and shall submit the questionnaire along with its Bid. Failure to provide all information requested within the questionnaire along with the Bid may cause the Bid to be rejected as non-responsive. The Town reserves the right to reject any Bid if an investigation of the information submitted does not satisfy the Town that the Bidder is qualified to properly carry out the terms of the Contract.

#### **ARTICLE 16. WORKERS' COMPENSATION CERTIFICATION**

In accordance with the provisions of Labor Code Section 3700, Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with the Town a Workers' Compensation Certificate prior to performing the work under this Contract. The form of such Workers' Compensation Certificate is included as part of the Bid Forms.

**ARTICLE 17. SIGNING OF BIDS**

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

**ARTICLE 18. SUBMISSION OF SEALED BIDS**

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the bid security and other required materials, in a sealed envelope, addressed and delivered or mailed, postage prepaid, to the Public Works Department of the Town before the time and day set for the receipt of bids. The envelope shall bear the title of the work and the name of the Bidder. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by the Town as provided herein. Bids received after the time and day set for the receipt of bids shall be returned to the Bidder unopened. The envelope shall also contain the following in the lower left-hand corner thereof:

**Bid of \_\_\_\_\_ (Bidder’s Name)  
for the Roadway Stabilization Project – 378 Scenic Road and 78 Wreden Avenue**

Only where expressly permitted in the Notice Inviting Bids may Bidders submit their Bids via electronic transmission pursuant to Public Contract Code sections 1600 and 1601. Any acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. The Town may reject any Bid not strictly complying with the Town’s designated methods for delivery.

**ARTICLE 19. OPENING OF BIDS**

At the time and place set for the opening and reading of bids, or any time thereafter, each and every Bid received prior to the time and day set for the receipt of bids will be publicly opened and read. The Town will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the Bidder. It is the Bidder’s sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the date(s) and time(s) indicated.

The public reading of each Bid will include the following information:

- A. The name and business location of the Bidder.
- B. The nature and amount of the bid security furnished by Bidder.

C. The Bid amount.

Bidders or their representatives and other interested persons may be present at the opening of the Bids. The Town may, in its sole discretion, elect to postpone the opening of the submitted Bids. The Town reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid.

#### **ARTICLE 20. WITHDRAWAL OF BID**

Any Bid may be withdrawn either personally or by written request, incurring no penalty, at any time prior to the scheduled closing time for receipt of bids. Requests to withdraw Bids shall be worded so as not to reveal the amount of the original Bid. Withdrawn Bids may be resubmitted until the time and day set for the receipt of bids, provided that resubmitted Bids are in conformance with the instructions herein.

Bids may be withdrawn after bid opening only by providing written notice to the Town within five (5) working days of the Bid opening and in compliance with Public Contract Code section 5100 *et seq.*, or as otherwise may be allowed with the consent of the Town.

#### **ARTICLE 21. BIDDERS INTERESTED IN MORE THAN ONE BID**

No Bidder shall be allowed to make, file or be interested in more than one Bid for the same work unless alternate Bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or from simultaneously submitting its own Bid as a prime contractor.

#### **ARTICLE 22. SUBSTITUTION OF SECURITY**

The Contract Documents call for monthly progress payments for the Work completed. The Town will retain a percentage of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the Town will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

#### **ARTICLE 23. PREVAILING WAGES**

The Town has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are available at the Town or may be obtained online at <http://www.dir.ca.gov>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

#### **ARTICLE 24. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code Sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the Town. The Contractor

shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

#### **ARTICLE 25. INSURANCE REQUIREMENTS**

Prior to commencing work, the successful Bidder shall purchase and maintain insurance as set forth in the General Conditions.

#### **ARTICLE 26. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS**

The successful Bidder will be required to furnish a labor and material payment bond and a faithful performance bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and is admitted by the State of California. Each bond shall be accompanied, upon the request of the Town, with all documents required by California Code of Civil Procedure Section 995.660 to the extent required by law. All bonding and insurance requirements shall be completed and submitted to the Town within ten (10) calendar days from the date the Town provides the successful bidder with the Notice of Award.

#### **ARTICLE 27. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract Documents.

#### **ARTICLE 28. FILING OF BID PROTESTS**

Bidders may file a protest of a Bid with the Town's Director of Public Works. In order for a Bidder's protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date or any Town determination or recommendation regarding the Bidder's bid, as applicable;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific Town staff determination or recommendation being protested;
- D. Specify in detail the grounds for protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, the Town may reject the protest without further review.

If the protest is timely and complies with the above requirements, the Town's Director of Public Works, or other designated Town staff member, shall review the protest, any response from the challenged Bidder(s), and all other relevant information. The Director of Public Works will provide a written decision to the protestor.

The procedure and time limits set forth in this Article are mandatory and are the sole and exclusive

remedy in the event of a Bid protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

#### **ARTICLE 29. BASIS OF AWARD; BALANCED BID**

The Town shall award the Contract to the lowest responsible Bidder submitting a responsive Bid. The lowest Bid will be determined on the basis of the Total Bid Price.

The Town may reject any Bid which, in its opinion when compared to other Bids received or to the Town's internal estimates, does not accurately reflect the cost to perform the work. The Town may reject as non-responsive any Bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

#### **ARTICLE 30. AWARD PROCESS**

Once all Bids are opened and reviewed to determine the lowest responsible Bidder submitting a responsive Bid, the Town Council may award the Contract. The apparent successful Bidder should begin to prepare the following documents: (1) the performance bond; (2) the payment bond; and (3) the required insurance certificates and endorsements. Once the Town notifies the Bidder of the award, the Bidder will have ten (10) calendar days from the date of this notification to execute the Contract and supply the Town with all of the required documents and certifications. Once the Town receives all of the properly drafted and executed documents and certifications from the Bidder, the Town will issue a Notice to Proceed to that Bidder.

#### **ARTICLE 31. EXECUTION OF CONTRACT**

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The Town may require appropriate evidence that the persons executing the Contract are duly empowered to do so. The Contract and bond forms to be executed by the successful Bidder are included within these Contract Documents and shall not be detached.

#### **ARTICLE 32. QUESTIONS**

Questions regarding this Notice Inviting Bids and Instruction to Bidders may be directed to Mike Jewett, Senior Geologist (Miller Pacific Engineering Group) at [mjewett@millerpac.com](mailto:mjewett@millerpac.com) or at 707-765-6140. No other members of the Town's staff or Town Council should be contacted about this procurement during the bidding process. Any and all inquiries and comments regarding this Bid must be communicated in writing, unless otherwise instructed by the Town. The Town may, in its sole discretion, disqualify any Bidder who engages in any prohibited communications.



**00 41 43 – BID FORMS**

**BID**

Bids will be received by the Town Clerk of the Town of Fairfax, until **2 p.m. on Thursday, September 1, 2022**

**ROADWAY STABILIZATION – 378 SCENIC ROAD AND 78 WREDEN AVENUE**

**NAME OF BIDDER:** \_\_\_\_\_

To the Town of Fairfax, with its principal place of business at 142 Bolinas Road, Fairfax, California 94930.

- A. In response to the Notice Inviting Bids dated August 10, 2022 and in accordance with the accompanying Instructions to Bidders, the undersigned hereby proposes to the Town to furnish all labor, technical and professional services, supervision, materials and equipment, other than materials and equipment specified as furnished by the Town, and to perform all operations necessary and required to construct the Project in accordance with the provisions of the Contract Documents and any addenda thereto, and at the prices stated opposite the respective items set forth in the Bid Schedule.
- B. This Bid constitutes a firm offer to the Town which cannot be withdrawn for 90 calendar days after the date set for opening of bids, or until a Contract is executed by the Town and a third party, whichever is earlier.
- C. The undersigned certifies that it has examined and is fully familiar with all of the provisions of the Contract Documents and any addenda thereto; that it has carefully checked all of the words and figures shown in its Bid Schedule; that it has carefully reviewed the accuracy of all statements in this Bid and attachments hereto; and that it understands and agrees that the Town will not be responsible for any errors or omissions on the part of the undersigned in preparing this Bid.
- D. If awarded a Contract, the undersigned agrees to execute and deliver to the Town within ten (10) calendar days after date of receipt of Notice of Award, a signed Contract and the necessary performance bond, payment bond, and certificates of insurance and endorsements.
- E. The following Bid Forms, which have been completed and executed by the undersigned Bidder, are incorporated by this reference and made a part of this Bid:
  - 1. Bid Schedule
  - 2. Bid security in the amount of not less than 10% of the Total Bid Price.
  - 3. Completed Designation of Subcontractors form.
  - 4. Fully executed Noncollusion Declaration form.

- 5. Completed Iran Contracting Act Certification form.
  - 6. Completed Public Works Contractor DIR Registration Certification form.
  - 7. Completed Contractor's Certificate Regarding Workers' Compensation form.
  - 8. Completed Bidder Information and Experience Form.
- F. Bidder is an individual \_\_\_\_\_, or corporation \_\_\_\_\_, or partnership \_\_\_\_\_, organized under the laws of the State of \_\_\_\_\_.
- G. The undersigned is hereby representing that it is and will be properly licensed both at the time that it submits a Bid as well as at the time the Contract is awarded, if the Contract is awarded to the undersigned.

- 1. Individual Contractor. Undersigned certifies that it is now licensed in accordance with the provisions of the Contractor's License Law of the State of California.

License number \_\_\_\_\_

Expiration date \_\_\_\_\_

License classification \_\_\_\_\_

- 1. Joint Venture. Undersigned certifies that the individual members of the joint venture are now licensed in accordance with the provisions of the Contractor's License Law of the State of California.

Member No. 1

Name \_\_\_\_\_

License number \_\_\_\_\_

Expiration date \_\_\_\_\_

License classification \_\_\_\_\_

Member No. 2

Name \_\_\_\_\_

License number \_\_\_\_\_

Expiration date \_\_\_\_\_

License classification \_\_\_\_\_

(If there are more than two members of the joint venture, attach a page for the additional member(s) with the above information.)

The undersigned acknowledges receipt, understanding, and full consideration of the following addenda to the Contract Documents:

Addenda No. \_\_\_\_\_

**[SIGNATURE ON NEXT PAGE]**

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

BIDDER:

Bidder's Business Address:

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Where signed) (City, State)

(corporate seal)

Dated: \_\_\_\_\_, 20\_\_\_\_\_  
State of Incorporation: \_\_\_\_\_

Names and addresses of all partners or joint venturers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Statement of the authority of signatory to bind Bidder:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BID SCHEDULE A – 378 SCENIC ROAD STABILIZATION**

<b>NO.</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT OF MEASURE</b>	<b>EST. QTY.</b>	<b>UNIT PRICE</b>	<b>ITEM COST</b>
1.	Mobilization, bonds, permits, layout of work, traffic control, daily cleanup, demobilization, final clean up, and all other misc. items not included below	LS	1		
2.	Erosion & Sediment Control: all minimum control measures for small construction projects required by MCSTOPPP	LS	1		
3.	Grading: excavate bench for wall construction, trim scarps. Offhaul and legally dispose of all debris and excess soil.	LS	1		
4.	Construct 35 LF, 8-foot tall reinforced concrete retaining wall.	SF	280		
5.	Drainage and Backfill, includes moisture conditioning, placement and compaction of wall drainage and backfill	CY	45		
6.	Grading: Preparation and compaction of subgrade, baserock, and asphalt concrete	SF	260		
7.	Permanent Erosion Control	SF	1,100		
<b>BASE BID TOTAL</b>					<b>\$</b>

**BID SCHEDULE B – 78 WREDEN AVENUE**

<b>NO.</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT OF MEASURE</b>	<b>EST. QTY.</b>	<b>UNIT PRICE</b>	<b>ITEM COST</b>
1.	Mobilization, bonds, permits, layout of work, traffic control, daily cleanup, demobilization, final clean up, and all other misc. items not included below	LS	1		
2.	Erosion & Sediment Control: all minimum control measures for small construction projects required by MCSTOPPP	LS	1		
3.	Drilling Bench Excavation, includes excavation, offhaul and disposal of soil for construction bench	CY	15		
4.	Drilled Pier Construction, includes drilling, staging and offhaul of drill spoils, reinforcing steel and concrete placement	LF	111		
5.	Grade Beam and Wall Stem Construction, includes forming, reinforcing steel and concrete placement.	SF	250		
6.	Drainage and Backfill, includes moisture conditioning, placement and compaction of wall drainage and backfill	CY	40		
7.	Replace Concrete Culvert, includes pavement demolition, trenching, removal and disposal of existing culvert, installation of new concrete pipe, backfill and pavement restoration.	LF	45		
8.	Culvert Extension, includes PVC culvert extension through face of new wall	LS	1		
9.	Rip Rap Dissipator, includes excavating and placing rip rap and geotextile placement.	LS	1		
10.	Asphalt overlay, includes all work and materials to construct asphalt overlay.	SF	2,200		
<b>BASE BID TOTAL</b>					<b>\$</b>

AGGREGATE BID PRICE BASED ON SUM OF BID SCHEDULES "A" and "B"

\$ \_\_\_\_\_  
Total Base Bid in Numbers

**The basis for award of contract shall be the Contractor's Aggregate Base Bid only, which is equal to the sum of the bids shown on Bid Schedules "A" and "B".**

The costs for any work shown or required in the Contract Documents, but not specifically identified as a bid line item are to be included in the related bid line items and no additional compensation shall be due to Contractor for the performance of the work.

All blank spaces appearing above must be filled in. Failure to fill in any blank spaces may render the Bid non-responsive. In case of discrepancy between the Unit Price and Item Cost set forth for a unit basis item, the Unit Price shall prevail and be utilized as the basis for determining the lowest responsive, responsible Bidder. However, if the amount set forth as a Unit Price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the Item Cost column, then the amount set forth in the Item Cost column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the Unit Price.

For purposes of evaluating Bids, the Town will correct any apparent errors in the extension of unit prices and any apparent errors in the addition of lump sum and extended prices.

The estimated quantities for Unit Price items are for purposes of comparing Bids only and the Town makes no representation that the actual quantities of work performed will not vary from the estimates. Final payment shall be determined by the Town from measured quantities of work performed based upon the Unit Price.

The undersigned agrees that this Bid Schedule constitutes a firm offer to the Town which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the bid opening, or until a Contract for the work is fully executed by the Town and a third party, whichever is earlier.

If the Contract Documents specify alternate bid items, the Town can choose to include any, all, or none of the alternate bid items in the Work. If the Town selects any of the alternate bid items, the corresponding alternate bid prices shall be added to or deducted from Base Bid Price for the work. The Town can award/select alternate bid items at any time(s).

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

**BID SECURITY**

**BID BOND**

[Note: Not required when other form of Bidder’s security, e.g. cash, certified check or cashier’s check, accompanies Bid.]

The makers of this bond are, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety and are held and firmly bound unto the Town of Fairfax, with its principal place of business at 142 Bolinas Road, Fairfax, California 94930, hereinafter called the Town, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to the Town for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated \_\_\_\_\_, 20\_\_\_\_, for Roadway Stabilization – 378 Scenic Avenue.

If the Principal does not withdraw its Bid within the time specified in the Contract Documents; and if the Principal is awarded the Contract and provides all documents to the Town as required by the Contract Documents; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the Town and judgment is recovered, the Surety shall pay all litigation expenses incurred by the Town in such suit, including reasonable attorneys’ fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporation.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_



# Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

Title(s)

- Partner(s)
  - Limited
  - General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

# Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

- Partner(s)                       Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
 Title or Type of Document

\_\_\_\_\_  
 Number of Pages

\_\_\_\_\_  
 Date of Document

\_\_\_\_\_  
 Signer(s) Other Than Named Above

**NOTE:** This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

**END OF BID BOND**

**DESIGNATION OF SUBCONTRACTORS**

The subcontractor listed below will perform work or labor or render service to the successful Bidder in or about the construction of the work or improvement, or are subcontractors licensed by the State of California who will, under subcontract to the successful Bidder, specially fabricate and install a portion of the work or improvement according to detailed drawings contained in the Contract Documents, in an amount in excess of one-half of one percent (1/2 of 1%) of the Bidder's total bid. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the California Public Contract Code, the Bidder shall set forth below:

- (a) The portion of the work to be done by the subcontractor;
- (b) The name and the location of the place of business;
- (c) The California contractor license number; and
- (d) The DIR public works contractor registration number.

If a Bidder fails to specify a subcontractor or if a Bidder specifies more than one subcontractor for the same portion of work, then the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself.

<b>Portion of Work to be done by Subcontractor</b>	<b>Name of Subcontractor</b>	<b>Location of Business</b>	<b>CSLB Contractor License No.</b>	<b>DIR Registration Number</b>

Portion of Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number

(Attach additional sheets if necessary)

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

**BIDDER INFORMATION AND EXPERIENCE FORM**

**A. INFORMATION ABOUT BIDDER**

(Indicate not applicable (“N/A”) where appropriate.)

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1.0 Name of Bidder: \_\_\_\_\_

2.0 Type, if Entity: \_\_\_\_\_

3.0 Bidder Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Telephone Number

\_\_\_\_\_ Email Address

4.0 How many years has Bidder’s organization been in business as a Contractor?  
\_\_\_\_\_

5.0 How many years has Bidder’s organization been in business under its present name? \_\_\_\_\_

5.1 Under what other or former names has Bidder’s organization operated? \_\_\_\_\_

6.0 If Bidder’s organization is a corporation, answer the following:

6.1 Date of Incorporation: \_\_\_\_\_

6.2 State of Incorporation: \_\_\_\_\_

6.3 President’s Name: \_\_\_\_\_

6.4 Vice-President’s Name(s): \_\_\_\_\_

\_\_\_\_\_

6.5 Secretary’s Name: \_\_\_\_\_

6.6 Treasurer’s Name: \_\_\_\_\_

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: \_\_\_\_\_

7.2 Name and address of all partners (state whether general or limited partnership):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.0 If other than a corporation or partnership, describe organization and name principals:

\_\_\_\_\_  
\_\_\_\_\_

9.0 List other states in which Bidder's organization is legally qualified to do business.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10.0 What type of work does the Bidder normally perform with its own forces?

\_\_\_\_\_  
\_\_\_\_\_

11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

\_\_\_\_\_  
\_\_\_\_\_

12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

\_\_\_\_\_  
\_\_\_\_\_

13.0 List Trade References:

\_\_\_\_\_  
\_\_\_\_\_

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14.0 List Bank References (Bank and Branch Address):

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15.0 Name of Bonding Company and Name and Address of Agent:

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**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**







**D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE**

**Personnel:**

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:

---

---

---

2. Summarize each person's specialized education:

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---

---

3. List each person's years of construction experience relevant to the project:

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---

---

4. Summarize such experience:

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Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the Town.

**E. ADDITIONAL BIDDER'S STATEMENTS:**

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

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Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

**NON-COLLUSION DECLARATION**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid Price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid Price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid Price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

Name of Bidder\_\_\_\_\_

Signature\_\_\_\_\_

Name and Title\_\_\_\_\_

Dated\_\_\_\_\_

**IRAN CONTRACTING ACT CERTIFICATION.**

(Public Contract Code section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor’s status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

The Contractor is not:

- (1) identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
- (2) a financial instruction that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

The Town has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the Town will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Date: \_\_\_\_\_

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

**PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.<sup>1</sup>

Name of Bidder: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

DIR Registration Expiration: \_\_\_\_\_

Small Project Exemption: \_\_\_\_\_ Yes or \_\_\_\_\_ No

Unless Bidder is exempt pursuant to the small project exemption, Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

<sup>1</sup> If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark “Yes” in response to “Small Project Exemption.”

**CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION.**

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

**00 52 13 – CONTRACT FOR CONSTRUCTION**

This Contract for Construction (“Contract”), No. \_\_\_\_\_ is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 202\_, by and between Town of Fairfax, with its principal place of business at 142 Bolinas Road, Fairfax, California 94930, sometimes hereinafter called the “Town” and **\*\*\*INSERT\*\*\***, sometimes hereinafter called “Contractor.”

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

**ARTICLE 1. SCOPE OF WORK.**

The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

**ROADWAY STABILIZATION – 378 SCENIC ROAD AND 78 WREDEN AVENUE**

Contractor is an independent contractor and not an agent of the Town. The Contractor and its surety shall be liable to the Town for any damages arising as a result of the Contractor’s failure to comply with this obligation.

**ARTICLE 2. TIME FOR COMPLETION.**

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the Town’s Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within ninety (90) calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

**ARTICLE 3. CONTRACT PRICE.**

The Town shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Payment shall be made as set forth in the General Conditions. The Town will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

**ARTICLE 4. LIQUIDATED DAMAGES.**

Contractor acknowledges that the Town will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the Town’s actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the Town the sum of \$1,500 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as liquidated damages and not as a penalty or forfeiture. This Article does not exclude recovery of other damages specified



in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the Town, in case of Contractor's default, from terminating the Contractor.

#### **ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.**

The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Forms
- Bid
- Bid Schedule
- Bid Security
- Designation of Subcontractors
- Information Required of Bidders
- Non-Collusion Declaration Form
- Iran Contracting Act Certification
- Public Works Contractor DIR Registration Certification
- Performance Bond
- Payment (Labor and Materials) Bond
- Contract for Construction
- General Conditions
- Special Conditions
- Specifications
- Addenda
- Construction Plans and Drawings
- Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
- Applicable Local Agency Standards and Specifications, as last revised
- Reference Specifications
- Approved and fully executed Change Orders
- Permits
- Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

#### **ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.**

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

**ARTICLE 7. INDEMNIFICATION.**

Contractor shall provide indemnification and defense as set forth in the General Conditions.

**ARTICLE 8. PREVAILING WAGES.**

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the Town or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

**ARTICLE 9. FALSE CLAIMS.**

Contractor acknowledges that if a false claim is submitted to the Town, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the Town seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

TOWN OF FAIRFAX

**CONTRACTOR**

By: \_\_\_\_\_  
HEATHER ABRAMS  
TOWN MANAGER

**[IF CORPORATION, TWO SIGNATURES,  
PRESIDENT OR VICE PRESIDENT AND  
SECRETARY OR TREASURER REQUIRED]**

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
**\*\*\*INSERT\*\*\***, Town Clerk

**[DELETE THE FOLLOWING SIGNATURE  
LINE IF NOT REQUIRED]**

By: \_\_\_\_\_

APPROVED AS TO FORM:

Its: \_\_\_\_\_

By: \_\_\_\_\_  
Best Best & Krieger LLP  
Town Attorney

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Contractor's License Number and  
Classification

\_\_\_\_\_  
DIR Registration Number

**(CONTRACTOR'S SIGNATURE MUST BE  
NOTARIZED AND CORPORATE  
SEAL AFFIXED, IF APPLICABLE)**

**END OF CONTRACT**

# Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

- Partner(s)                       Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
 Title or Type of Document

\_\_\_\_\_  
 Number of Pages

\_\_\_\_\_  
 Date of Document

\_\_\_\_\_  
 Signer(s) Other Than Named Above

**00 61 13 – BOND FORMS**

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Town of Fairfax, with its principal place of business at 142 Bolinas Road, Fairfax, California 94930, (hereinafter referred to as the “Town”) has awarded to [REDACTED], (hereinafter referred to as the “Contractor”) an agreement for Contract No. 51-813 (hereinafter referred to as the “Project”);

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated August 10, 2022 (hereinafter referred to as “Contract Documents”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, the undersigned Contractor and [REDACTED] as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Town in the sum of [REDACTED] Dollars, (\$ [REDACTED]), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the Town, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney’s fees, incurred by the Town in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by the Town, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Town from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the Town’s rights or the Contractor or Surety’s

obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the Town to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Town's option:

- i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Town, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Town under the Contract and any modification thereto, less any amount previously paid by the Town to the Contractor and any other set offs pursuant to the Contract Documents.
- iii. Permit the Town to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Town under the Contract and any modification thereto, less any amount previously paid by the Town to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Town may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Town, when declaring the Contractor in default, notifies Surety of the Town's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges is \$\_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California)

\_\_\_\_\_





# Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_ Title(s)

- Partner(s)                       Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_ Title or Type of Document

\_\_\_\_\_ Number of Pages

\_\_\_\_\_ Date of Document

\_\_\_\_\_ Signer(s) Other Than Named Above

**NOTE:** This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

**END OF PERFORMANCE BOND**

**PAYMENT BOND (LABOR AND MATERIALS).**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Town of Fairfax, with its principal place of business at 142 Bolinas Road, Fairfax, California 94930 (hereinafter designated as the "Town"), has awarded to [REDACTED], (hereinafter designated as the "Principal") an agreement for Contract No. 51-813 (hereinafter referred to as the "Project");

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated August 10, 2022 (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and [REDACTED], as Surety, are held and firmly bound unto the Town in the penal sum of [REDACTED] Dollars (\$ [REDACTED]) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Town in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of

any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the Town and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_

# Notary Acknowledgment

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STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_ Title(s)

- Partner(s)                       Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_ Title or Type of Document

\_\_\_\_\_ Number of Pages

\_\_\_\_\_ Date of Document

\_\_\_\_\_ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

# Notary Acknowledgment

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STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

### OPTIONAL

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#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_ Title(s)

- Partner(s)                       Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_ Title or Type of Document

\_\_\_\_\_ Number of Pages

\_\_\_\_\_ Date of Document

\_\_\_\_\_ Signer(s) Other Than Named Above

**NOTE:** This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

**END OF PAYMENT BOND**

## 00 72 00 – GENERAL CONDITIONS

### ARTICLE 1 -TERMS; DEFINITIONS

#### 1.1 Defined Terms.

- A. Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.
  2. Additional Work -- New or unforeseen work will be classified as “Additional Work” when the Engineer determines that it is not covered by the Contract.
  3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
  4. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.
  5. Bid Security -- The bid bond, cashier’s check, or certified check to be made by the Bidder, which is to accompany the Bid as a guaranty of good faith to enter into a written contract.
  6. Bidder -- The individual or entity who submits a Bid directly to the Town.
  7. Change Order (“CO”) -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
  8. Change Order Request (“COR”) -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work.
  9. Contract -- The entire integrated written agreement between the Town and Contractor concerning the Work. “Contract” may be used interchangeably with “Agreement” in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
  10. Contract Documents -- The documents listed in Section 00 52 13, Article 5 of the Contract for Construction. Some documents provided by the Town to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.

11. Contract Price -- Amount to be paid by the Town to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.
12. Contract Time -- The number of days or the dates stated in the Contract Documents to: achieve defined milestones, if any; and to fully complete the Work.
13. Contractor -- The individual or entity with which the Town has contracted for performance of the Work.
14. Critical Supply Shortage -- An unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.
15. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
16. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
17. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor Submittals are not Drawings as so defined.
18. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
19. Engineer -- Whenever not qualified, shall mean the Town Engineer or the Engineer authorized to act for and in behalf of the Town, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.
20. Engineer of Record -- The individual, partnership, corporation, joint venture, or other legal entity that prepares the Drawings.
21. Force Majeure Event -- An event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in

the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the Town in its capacity as a municipal authority.

22. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time, or any substance or material identified as hazardous under any state or federal statute governing handling, disposal and/or cleanup of any such substance or material, whichever is more restrictive.

23. Holiday – Holidays occur on:

New Year's Day - January 1  
Martin Luther King Day – Third Monday in January  
President's Day – Third Monday in February  
Memorial Day - Last Monday in May  
Independence Day - July 4  
Labor Day - First Monday in September  
Veteran's Day - November 11  
Thanksgiving Day - Fourth Thursday in November  
Friday after Thanksgiving  
Christmas Eve – December 24  
Christmas Day - December 25  
New Year's Eve – December 31

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

24. Notice of Award -- The written notice by the Town to the successful Bidder stating that upon timely compliance by the successful Bidder with the conditions precedent listed therein, the Town will sign and deliver the Contract.

25. Notice of Completion -- The form which may be executed by the Town constituting final acceptance of the Project.

26. Notice to Proceed -- A written notice given by the Town to Contractor fixing the date on which the Contractor may proceed with the Work and when the Contract Time will commence to run.

27. Project -- The total construction of which the Work to be performed under the Contract Documents, may be the whole, or a part.



28. Record Drawings – The record set of as-builts prepared by the Contractor during the Work in accordance with the requirements of the General Conditions.
29. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include, but are not limited to, asphalt, concrete, brick, concrete block, and rock.
30. Sample -- A physical example furnished by the Contractor to illustrate materials, equipment or workmanship; to establish standards by which the Work will be judged.
31. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
32. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
33. Site -- Lands or areas indicated in the Contract Documents as being furnished by the Town upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the Town which are designated for the use of Contractor.
34. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
35. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the Town for performance of any portion of the Work at the Site.
36. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.
37. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
38. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
39. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its Bid or as adjusted in accordance with the Contract Documents.

40. Warranty -- A guarantee provided to the Town by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this state, whichever is longer.
41. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## 1.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
  1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Contractor is implied.
- B. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 -PRELIMINARY MATTERS**

### 2.1 Delivery of Contract Documents.

- A. Within ten (10) Days after receipt of the Notice of Award and before the Town will execute the Contract, the Contractor shall furnish and file with the Town a signed Contract and the necessary performance bond, payment bond, and certificates of insurance and endorsements, as well as any other documents specified in the Contract Documents.

## 2.2 Bonds.

- A. Contractor shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to the Town conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price. Bonds shall be delivered to the Town within ten (10) Days after receipt of the Notice of Award and before execution of the Contract by the Town.

## 2.3 Evidence of Insurance.

- A. Prior to commencing any Work but no later than ten (10) Days after receipt of the Notice of Award, the Contractor shall submit or cause to be submitted any and all certificates of insurance and endorsements, showing that the Contractor has the required insurance, to the attention of the Town. Such insurance is to be provided at the sole cost and expense of the Contractor. No Work shall be performed until all of the required insurance has been received and approved.

## 2.4 Execution of the Contract.

- A. Upon receipt of the required documents, the Town will execute the Contract, establishing the Effective Date of the Contract.

## 2.5 Contractor's Failure to Perform.

- A. Should Contractor fail to comply with timelines provided above, the Town shall retain the right to enforce and collect on the Contractor's Bid Security, rescind award to the Contractor and award the Contract to the next lowest responsible Bidder providing a responsive Bid as determined by the Town. If the Town elects to accept bonds and insurance submitted late, the Contract Time will begin to run as of the date stated in the Notice to Proceed. However, the number of Days beyond the original ten (10) Days it took to receive the properly executed Contract and related items may be deducted from the Contract Time.

## 2.6 Commencement of Contract Times; Notice to Proceed.

- A. The Town will not issue a Notice to Proceed until after the Effective Date of the Contract. Work shall commence within ten (10) Days of the date stated in the Notice to Proceed. The Contract Time begin to run on the date specified in the Notice to Proceed. No Work shall be done at the Site prior to the issuance of the Notice to Proceed.

2.7 Copies of Documents.

- A. Contractor will be furnished, free of charge, five (5) copies of the Contract Documents. Additional copies may be obtained at cost of reproduction. Contractor shall maintain a clean, undamaged set of Contract Documents, including Submittals, at the Project site.

2.8 Substitution Requests, Schedule of Submittals, and Schedule.

- A. Substitution Requests. Within thirty-five (35) Days of Contract award (unless otherwise specified in the Contract Documents), Contractor shall provide all substitution requests as further described in the General Conditions.
- B. Schedule of Submittals. Within ten (10) Days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), Contractor shall submit to the Town a Schedule of Submittals that conforms with the requirements of the Contract Documents.
- C. Schedule. Within ten (10) Days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), the Contractor shall submit a construction schedule that conforms with the requirements of the Contract Documents.

2.9 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Site is started, a conference attended by the Town, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Submittals and Shop Drawings, processing applications for payment, and maintaining required records. At this conference the Town and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.10 Subcontractor Mobilization Meeting.

- A. Prior to the start of each major Subcontractor, the Contractor, Subcontractor, and Engineer shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.11 Authority of Council; Engineer.

- A. The Town Council has the final authority in all matters affecting the Work. Within the scope of the Contract, the Engineer has the authority to enforce compliance with the Contract Documents. The Contractor shall promptly comply with instructions from the Engineer.
- B. The decision of the Engineer is final and binding on all questions relating to:

1. quantities;
  2. acceptability of material, equipment, or Work;
  3. execution, progress or sequence of Work;
  4. interpretation of the Plans, Specifications, or other Contract Documents; and
  5. Any other areas specifically identified in the Contract Documents or under the law.
- C. Compliance with instructions from the Engineer shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the Town Council.

2.12 Mobilization.

- A. When a bid item is included in the Bid Schedule for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate. When no bid item is provided for mobilization payment for such costs will be deemed to be included in the other items of the Work.
- B. Payment for mobilization based on the lump sum provided in the Bid Schedule, shall constitute full compensation for all such Work. The lump sum price provided for mobilization shall not be more than 5% of the Total Bid Price. No payment for mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under mobilization shall include, but shall not be limited to, the following principal items:
1. Obtaining and paying for all bonds, insurance, and permits.
  2. Moving on to the Project Site of all Contractor's plant and equipment required for the first month's operations.
  3. Installing temporary construction power, wiring, and lighting facilities, as applicable.
  4. Establishing fire protection system, as applicable.
  5. Developing and installing a construction water supply, as applicable.
  6. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer, if specified, complete, with all specified furnishings and utility services.
  7. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
  8. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including

temperature and humidity control, if recommended by the manufacturer, and for all security.

9. Arranging for and erection of Contractor's work and storage yard.
10. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
11. Full-time presence of Contractor's superintendent at the job Site as required herein.
12. Submittal of construction schedule, Submittals, and Shop Drawings as required by the Contract Documents.

### **ARTICLE 3 -CONTRACT DOCUMENTS; INTENT**

#### **3.1 Examination of Drawings, Specifications, and Site of Work.**

- A. Examination of Contract Documents; Site. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.
- B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.
- D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

#### **3.2 Intent of Contract Documents.**

- A. The Contract Documents are complementary; what is required by any one will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or

equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the Town.

- B. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.
- C. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- D. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in these General Conditions.

### 3.3 Reference Standards.

#### A. Standards, Specifications, Codes, Laws, and Regulations.

- 1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the Town, Contractor, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the Town, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.4 Reporting and Resolving Discrepancies; Order of Precedence.

- A. Reporting Discrepancies. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the Town any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual

knowledge of, and shall obtain a written interpretation or clarification from the Town before proceeding with any Work affected thereby. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written Request for Information (RFI) to the Town. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

B. Order of Precedence.

1. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
  - a. Permits from other agencies as may be required by law
  - b. Change Orders, most recent first
  - c. Contract
  - d. Addenda, most recent first
  - e. Special Conditions
  - f. Specifications
  - g. Construction Plans and Drawings (Drawings)
  - h. General Conditions
  - i. Instructions to Bidders
  - j. Notice Inviting Bids
  - k. Contractor's Bid (Bid Forms)
  - l. Standard Specifications for Public Works Construction "Greenbook" latest edition (Sections 1-9 Excluded)
  - m. Applicable Local Agency Standards and Specifications
  - n. Standard Drawings
  - o. Reference Documents
2. With reference to the drawings the order of precedence shall be as follows:
  - a. Figures govern over scaled dimensions
  - b. Detail drawings govern over general drawings



- c. Addenda/Change Order drawings govern over Drawings
  - d. Drawings govern over Standard Drawings
  - e. Drawings govern over Shop Drawings
3. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.5 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by Change Order or written amendment to the Contract duly executed by the parties.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the Town, by one or more of the following ways:
  - 1. The Town's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or
  - 2. The Town's issuance of a response to an RFI.
- C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.6 Reuse of Documents.

- A. Contractor and any Subcontractor or Supplier shall not:
  - 1. Have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or
  - 2. Reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the Town and Engineer of Record and specific written verification or adaptation by Engineer of Record.
- B. The prohibitions of this Article will survive final payment or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

## ARTICLE 4 -INDEMNIFICATION; INSURANCE

### 4.1 Indemnification.

- A. To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the Town's choosing), indemnify and hold harmless the Town, its officials, officers, employees, agents, and authorized volunteers, and each of them from and against:
1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the Town or its officials, officers, employees, agents, or authorized volunteers (including passive negligence), except such loss or damages caused by the sole negligence or willful misconduct or active negligence of the Town or its officials, officers, employees, or authorized volunteers.
  2. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.
  3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
  4. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.
- B. Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the Town choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Town or its officials, officers, employees, agents, or authorized volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Town or its officials, officers, employees, agents, or authorized volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse the Town and its officials, officers, employees, agents, and authorized

volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

- C. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article. Contractor's obligation to indemnify the Town shall not be restricted to insurance proceeds, if any, received by the Town and its officials, officers, employees, agents, and authorized volunteers.

#### 4.2 Insurance.

- A. General Requirements. The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the Town that it has secured all insurance required hereunder. Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Contract for cause. Contractor shall furnish the Town with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the Town. All certificates and endorsements must be received and approved by the Town before Work commences.
- B. Additional Insureds; Waiver of Subrogation. The Town, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its Subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for Subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against the Town, its officers, officials, agents, employees or volunteers or shall specifically allow Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the Town, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to the Town prior to commencement of work.

- C. Workers' Compensation Insurance. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the Town certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the Town, if in the form and coverage as set forth in the Contract Documents.
- D. Employer's Liability Insurance. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide the Town with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the Town.
- E. Commercial General Liability Insurance. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.
1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the Town, and shall not preclude the Town from taking such other actions available to the Town under other provisions of the Contract Documents or law.
  2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.
  4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the Town may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.
  5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.
- F. Automobile Liability Insurance. Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars (\$1,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the Town. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.
- G. Form and Proof of Carriage of Insurance.
1. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the Town's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the Town the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
  2. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty

(30) days prior written notice by certified mail, return receipt requested, has been given to the Town; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its officials, officers, agents, employees, and volunteers.

3. The Certificate(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the Town prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the Town may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the Town receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the Town has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.
4. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the Town's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
5. The Town reserves the right to adjust the monetary limits and types of insurance coverages during the term of this Contract including any extension thereof if, in the Town's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
6. Contractor shall report to the Town, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.
7. Products/completed operations coverage shall extend a minimum of three years after the project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The Town, its officers, officials, agents employees, and volunteers shall be included as insureds under the policy.

## ARTICLE 5 -CONTRACTOR RESPONSIBILITIES; REGULATORY REQUIREMENTS

### 5.1 Applicable Laws.

- A. Contractor shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither the Town nor the Engineer shall be responsible for monitoring Contractor's compliance with any Applicable Laws. If Contractor performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

### 5.2 Permits and Licenses.

- A. Town will apply and pay for the review of necessary encroachment permits for Work within the public rights-of-way. All other necessary permits and licenses necessary for prosecution of the Work shall be secured and paid for by Contractor, including, but not limited to, permits, licenses and fees required by agencies with authority in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract Documents. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Contract Documents or by governing authorities, except for such off-site inspections delineated as the Town's responsibility pursuant to the Contract Documents. Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the Town.

### 5.3 Taxes.

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

### 5.4 Traffic Control.

- A. Traffic control plans, if required, shall be prepared at Contractor's expense. Traffic control shall be performed at Contractor's expense in accordance with the requirements of the Town and/or the local agency with jurisdiction. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the Town shall be included in the Contractor's Bid.
- B. All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having

jurisdiction over the Project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the Project for approval prior to starting Work.

- C. The Contractor's representative on the Site responsible for traffic control shall produce evidence that he or she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

#### 5.5 Safety.

- A. Contractor shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Contractor shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Applicable Laws.
- B. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512. The Contractor shall submit an Illness and Injury Prevention Program and a Project Site specific safety program to the Town prior to beginning Work. Contractor shall maintain a confined space program that meets or exceeds the Town's standards. Contractor needs to make themselves aware of the Town's safety policies and procedures, and shall meet or exceed all Town standards in areas where the Town must enter to perform inspections.

#### 5.6 Hazardous Waste.

- A. The Town shall not be responsible for any Hazardous Waste brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges a Hazardous Waste onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Contractor



shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The Town, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.

- B. If the Contractor encounters Hazardous Waste which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify the Town (and promptly thereafter confirm such notice in writing). The Town shall contract for any services required to directly remove and/or abate Hazardous Waste, if required, and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the Town and Contractor.
- C. Contractor shall indemnify and hold harmless the Town from and against claims, damages, losses and expenses, arising from a Hazardous Waste on the Project Site, if such Hazardous Waste exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either i) shown on the Contract Documents or information available to bidders; or (ii) brought to the site by Contractor. Nothing in this paragraph shall obligate the Contractor to indemnify the Town in the event of the sole or active negligence or willful misconduct of the Town, its officers, agents, or employees.

#### 5.7 Sanitary Facilities.

- A. Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with Applicable Laws. Toilets shall be placed inside sealed secondary containment devices installed on a flat, level surface. Accumulated liquids in the secondary containment devices shall be properly removed and legally disposed without spillage onto the ground. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

#### 5.8 Dust Control.

- A. Contractor, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

5.9 Air Pollution Control.

- A. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.
- B. Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine. Contractor shall indemnify the Town against any fines or penalties imposed by the air quality management district, CARB, or any other governmental or regulatory agency for its violations of Applicable Laws as well as those of its Subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in the Contract Documents.

5.10 Water Quality Management and Compliance.

- A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
- B. Contractor shall keep itself and all Subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California State Water Resources Control Board Order Number 2009-0009-DWQ (NPDES Permit No. CAS000002), as amended by Order Numbers 2010-0014-DWQ, 2012-0006-DWQ, and any subsequent amendment to or renewal thereof, State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004), Santa Ana Regional Water Quality Control Board No. R8-2010-0036 (NPDES No. CAS618036), and any amendment or renewal thereof.
- C. Contractor shall comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Construction General Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall comply with the lawful requirements of the Town, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the

Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

- D. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Contractor agrees to indemnify and hold harmless the Town, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which the Town, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Construction General Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the Town, its officials, officers, agents, employees or authorized volunteers. The Town reserves the right to defend any enforcement action or civil action brought against the Town for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the Town for the costs associated with, any settlement reached between the Town and any relevant enforcement entity.

#### 5.11 Environmental Quality Protection.

- A. The Contractor shall comply with all requirements of applicable federal, state, and local environmental rules and regulations. Any infractions of said rules and regulations by the Contractor during the term of the Contract, which result in penalties, will be the responsibility of the Contractor. The Town operates under a number of environmental permits issued by various agencies. If due to an action, inaction, or negligence by the Contractor, the Town becomes subject to non-compliance penalties, the cost of such penalties shall be borne by the Contractor.
- B. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.
- C. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the Town immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to Town within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent

necessary to protect the endangered plant or animal. If directed by the Town, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any Town directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by Town or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.

- D. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor shall notify the construction/archeological monitor and/or the Town immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the construction/archeological monitor and/or Town within two (2) Days. Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by the Town, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the Town and the construction/archeological monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any Town directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify Town pursuant to the Contract Documents.

#### 5.12 Noise Restrictions.

- A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

5.13 Diversion of Recyclable Waste Material.

- A. In compliance with the applicable Town's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by the Town or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

5.14 Workers; Contractor's Supervision.

- A. Contractor shall be an independent contractor for the Town and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of the Town and are not entitled to benefits of any kind normally provided employees of the Town, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.
- B. By executing the Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all Subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the Town to terminate the Contract for cause: (1) failure of the Contractor or its Subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.
- C. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her. Any person in the employ of the Contractor whom the Town may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.
- D. Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the Town. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

5.15 Labor.

- A. Hours of Work.

1. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
  2. The Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Town and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
  3. The Contractor shall pay to the Town a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
  4. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the Town.
  5. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project Site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on Holidays, unless otherwise approved by the Town:
    - a. Powered Vehicles
    - b. Construction Equipment
    - c. Loading and Unloading Vehicles
    - d. Domestic Power Tools
- B. Payroll Records; Labor Compliance.
1. Pursuant to Labor Code section 1776, Contractor and all Subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the

Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations (“DIR”) on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
3. Any stop orders issued by the DIR against Contractor or any Subcontractor that affect Contractor’s performance of Work, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Town. Contractor shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any Subcontractor.
4. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the Town. The Contractor shall also provide the following:
  - a. A certified copy of the employee’s payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
  - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement (“DLSE”) of the DIR or shall contain the same information as the forms provided by the DLSE.
6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the Town, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual’s name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.
7. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should

noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the Town for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

8. The responsibility for compliance with this Article shall rest upon the Contractor.

C. Prevailing Rates of Wages.

1. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Since this Project involves an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov](http://www.dir.ca.gov). In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the Town and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor’s principal place of business and at the Project site. Contractor shall defend, indemnify and hold the Town, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.
2. The Contractor shall forfeit as a penalty to the Town not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
3. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

- D. Public Works Contractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently



registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

- E. Employment of Apprentices. Contractor and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.
- F. Nondiscrimination/Equal Employment Opportunity. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.
- G. Debarment of Contractors and Subcontractors. Contractors or Subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the Town. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

#### 5.16 Subcontracts.

- A. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Work. Contractor shall be as fully responsible to the Town for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any

contractual relationship between any Subcontractor and the Town. The Town reserves the right to accept all Subcontractors. The Town's acceptance of any Subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents. Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

5.17 Progress Meetings.

- A. The Contractor shall schedule and hold regular progress meetings at least weekly and at other times as requested by Engineer or as required by progress of the Work. The Contractor and Town shall attend each meeting. Contractor may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors. The Town will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

5.18 Submittals.

- A. Schedule of Submittals. Within five (5) Days after the Notice to Proceed (unless otherwise specified in the Contract Documents), Contractor will prepare and deliver a Schedule of Submittals to the Town that has been fully integrated with the progress schedule and identifies each Submittal required by the Contract Documents as well as the date on which Contractor will deliver each Submittal to the Town. Each Submittal must be delivered to the Town at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Contractor is responsible for any schedule delays resulting from the Submittal process.
- B. Submittal Procedures. Where a Submittal, Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the Town review and approval of the pertinent submittal will be performed at the sole risk and expense and responsibility of Contractor. Contractor will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:
1. Submittals must be transmitted electronically.
  2. Transmittals will be sequentially numbered. Contractor to mark revised Submittals with original number and sequential alphabetic suffix.
  3. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to the Town. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the transmittal letter of the submittal.

4. Each Submittal will identify the Project, Contractor, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification Section number appropriate to Submittal.
  5. By transmitting a Submittal, Contractor certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction Work, and that coordination of information is according to requirements of the Work and Contract Documents.
  6. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
  7. When Submittal is revised for resubmission, Contractor shall promptly address the Town's comments and resubmit. Contractor shall identify changes made since previous submission.
  8. Submittals not required by the Contract Documents or requested by the Town will not be acknowledged or processed.
  9. Incomplete Submittals will not be reviewed by the Town. Delays resulting from incomplete Submittals are not the responsibility of the Town.
  10. Contractor shall not be entitled to any extension of the Contract Time as a result of the Submittal process.
  11. Contractor shall allow a minimum of twenty (20) Days for review of Submittals unless otherwise specified in the Contract Documents.
- C. Town's Review. The Town's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. The Town review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Town's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Town has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal. The Town's review of Submittals shall not relieve Contractor from responsibility for errors in Submittals.
- D. Resubmittal Procedures. Contractor shall make corrections required by the Town and shall return corrected Submittals and submit, as required, new Submittals for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Town on previous Submittals.
- E. Schedule Milestone for Submittals. Contractor must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If

Contractor fails to submit the Submittals in accordance with the Schedule of Submittals, Contractor will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Contractor will be liable for the time calculated from the date the Submittal is due until the date a compliant Submittal is made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.

5.19 Shop Drawings; Samples.

A. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the Town the services, materials, and equipment Contractor proposes to provide and to enable the Town to review the information for assessing conformance with information given and design concept expressed in Contract Documents.
2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction. Shop Drawings for steel structures shall consist of shop details, erection and other working Drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Engineer. These may include drawings for false work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.

B. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable the Town to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

C. Before submitting each Shop Drawing or Sample, Contractor shall have:

1. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. Determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- D. The Town will review Shop Drawings and Samples in accordance with the Schedule of Submittals. With each Submittal, Contractor shall give the Town specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample Submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to the Town for review and approval of each such variation.

#### 5.20 Record ("As-Built") Drawings.

- A. The Contractor shall maintain one record set of Contract Documents at the Site or digitally in an acceptable format. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Drawings. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations. Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. Any required as-built drawings of civil engineering elements of the Work shall be prepared by a registered civil engineer.
- B. These master Record Drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders, shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. Record Drawings shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep Record Drawings current could result in withholding partial payment.
- C. Upon completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to the Engineer. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the Town, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

#### 5.21 Layout and Field Engineering.

- A. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work and all necessary surveys to compute quantities of Work performed.

5.22 Separate Contracts and Cooperation.

- A. Separate Contracts. The Town reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- B. Cooperation. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the Town in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The Town shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project Site.

5.23 Work Site.

- A. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Work will be provided by the Town. Unless otherwise specified in the Special Provisions, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold the Town harmless from all claims for damages caused by such actions. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to Town or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- B. Site Maintenance. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.

- C. Cleaning. Prior to Completion of the Work, Contractor shall clean the Site and make it ready for utilization by the Town. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

5.24 Utility Usage.

- A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Contractor shall remove all temporary distribution systems. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. All permanent meters installed shall be listed in the Contractor's name until the Work is accepted. For Work to be performed in existing Town facilities, Contractor may use the Town's existing utilities, provided such use is reasonable under the circumstances. If Contractor uses the Town utilities, it will not need to compensate the Town for reasonable consumption of utilities, but Contractor will be responsible for any excessive, unreasonable or wasteful utility usage. Amounts due the Town under this section may be deducted from progress payments.

5.25 Protection of Work and Property.

- A. The Contractor shall digitally record video and take photographs of the Project site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Project Site and adjacent improvements immediately prior to the start of Work (minimum 1080p video and 4MP photo). All videos and photographs shall be date and time stamped. The Contractor shall submit the video and photos in digital format on a memory stick before the commencement of Work, along with a map outlining the route and locations of the videos and/or photographs. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the Town. All Work shall be solely at the Contractor's risk.
- B. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

- C. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:
1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
  2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
  3. Deliver materials to the Site over a route designated by the Town.
  4. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Town. Contractor shall not unreasonably encumber the Site with its materials.
  5. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the Town, at no cost to the Town.
  6. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the Town.
  7. Preserve and protect from injury all buildings, pole lines and all directional, warning and mileage signs that have been placed within the right-of-way.
  8. At the completion of work each day, leave the Work and the Site in a clean, safe condition.
  9. Comply with any stage construction and/or traffic handling plans. Access to residences and businesses shall be maintained at all times, except with the Town's written approval. Any request for approval to reduce or restrict access to residences and business must be submitted to the Town at least seven (7) Days in advance, and the Town may issue or withhold approval in its sole discretion.
- D. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.
- E. Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify the Town, in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The Town shall be entitled to inspect and copy any such documentation, video, or photographs. Contractor shall maintain all investigation documentation including video and/or photographs for a minimum of four (4) years following completion of the Project.



5.26 Emergencies.

- A. In emergencies affecting the safety or protection of persons or the Work or Property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the Town or the Engineer, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

**ARTICLE 6 -MATERIALS; INSPECTION**

6.1 Access to Work.

- A. The Town, Engineer, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs.

6.2 Materials.

- A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time. Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- B. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or Supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the Town free from any claims, liens, or charges.
- C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of the Town or any independent contractor.
- D. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the Town shall not be liable for Contractor's failure to so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimension,

elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

### 6.3 Test and Inspections.

#### A. Inspection of Work.

1. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or approved, Contractor shall provide the Engineer at least two (2) Days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the Town, Contractor shall promptly inform the Town of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for Town testing and inspection shall be paid by the Town. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
2. If Contractor gives notice of an inspection pursuant to the Contract Documents, the Town will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Requested inspections before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two (2) Days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits.
3. The Contractor shall pay for the cost of any minimum "show up" costs of a materials testing technician that was called for by the Contractor but ultimately the Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to the Contractor.
4. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
5. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the Town, and not by Contractor. Unless otherwise stated and as provided by the Contract Documents, the Town shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
6. Reexamination of Work may be ordered by the Town. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the Town shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

#### B. Testing of Materials.

1. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the Town so that the Town may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.
2. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the Town, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
3. Unless otherwise specified in the Special Provisions, all initial testing and a reasonable amount of retesting will be performed under the direction of the Engineer, and at no expense to the Contractor. The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed Supplier and source of material. If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to re-notify the Engineer when samples which are representative may be obtained.
4. A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Specifications so require or if so required by the Engineer. The Engineer may waive the materials testing requirements and accept a Certificate of Compliance. Material test data may be required by the Engineer to be included with the Submittal. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.
5. Copies of mill certificates of composition and quality of all component materials (reinforcing steel, structural steel, lumber, etc.) incorporated in the construction of the Work shall be provided to the Town at the time of delivery. Town shall retain the right to reject any raw material not provided with a mill certificate at the time of delivery.
6. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. If any product proves unacceptable after improper storage, handling or for any other reason it shall be rejected, not incorporated into the Work, and shall be removed from the Project Site all at the Contractor's expense.

#### 6.4 Requests for Substitutions.

- A. For the purposes of this provision, the term “substitution” shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Contract Documents or otherwise referenced herein.
- B. Pursuant to Public Contract Code section 3400(b), the Town may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.
- C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words “or equal.” Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the Town has adopted uniform standards for certain materials, processes, and articles.
- D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any “or equal” material, process, or article no later than thirty-five (35) Days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the Town, the Contractor shall provide the material, method or service specified herein. The Town shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.
- E. Substantiating data as described above shall include, at a minimum, the following information:
  - 1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.
  - 2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
  - 3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.
  - 4. Information detailing the durability and lifecycle costs of the proposed substitution.
- F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in

rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.

- G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.
- H. The Contractor shall bear the costs of all the Town work associated with the review of substitution requests.
- I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

## **ARTICLE 7 -SUBSURFACE AND PHYSICAL CONDITIONS; UTILITIES**

### **7.1 Soils Investigations.**

- A. Reports and Drawings. The Special Conditions identify: those reports known to the Town of explorations and tests of subsurface conditions at or contiguous to the site; and those drawings known to the Town of physical conditions relating to existing surface or subsurface structures at the site (except Underground Facilities).
- B. Limited Reliance by Contractor on Technical Data Authorized. Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents. Contractor shall make its own interpretation of the "technical data" and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such "technical data," Contractor may not rely upon or make any claim against the Town, Town's Engineer, or Engineer of Record, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
  - 2. other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

### **7.2 Ownership of Site Materials Found.**

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Contractor or any of its Subcontractors in the performance of the Contract, and the right to use said items

in carrying out the Contract, or to dispose of same, is hereby expressly reserved by the Town. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Contractor will, as determined by the Town, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided the Town shall have the right to use or consume these materials without payment to a third party.

### 7.3 Existence of Utilities at the Work Site.

- A. Existing Utilities. The location of known existing utilities and pipelines are shown on the Drawings in their approximate locations. However, nothing herein shall be deemed to require the Town to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Project. The Town will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the Town in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities.
- B. Utility Location.
1. It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which the Contractor believes may affect or be affected by the Contractor's operations, by taking all reasonable steps necessary including, but not limited to, calling Underground Service Alert to locate utilities in accordance with the procedures described in Government Code 4216 et seq. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article. The locating of utilities shall be in conformance with Government Code section 4216 et seq. except for the Town's utilities located on the Town's property and not on public right-of-way.
  2. A "High Priority Subsurface Installation" is defined in Government Code section 4216 (j) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."
  3. A "Subsurface Installation" is defined in Government Code section 4216 (s) as "any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines."
  4. Pursuant to Government Code section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more

than 14 Days before performing any excavation. The date of the notification shall not count as part of the two-working-day notice. Before notifying the appropriate regional notification center, the Contractor shall delineate the area to be excavated. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor shall furnish to the Engineer written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.

5. After the utility survey is completed, the Contractor shall commence “potholing” or hand digging to determine the actual location of the pipe, duct, or conduit and in accordance with Government Code section 4216.4 if the excavation within the “tolerance zone” of a subsurface installation. The Engineer shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.
  6. The Contractor's attention is directed to the requirements of Government Code section 4216.2 (c) which provides: “When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting.” The Contractor shall notify the Engineer in advance of this meeting.
- C. Utility Relocation and Repair. If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Engineer in writing. The Engineer will supply a method for correcting said interferences in accordance with the responsibilities of this Article and Government Code section 4215. Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, the Contractor shall call 911 emergency services. Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work
- D. Construction at Existing Utilities. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make

accommodates to maintain, all utilities. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the Town will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify Town as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

#### 7.4 Trenches.

- A. Trenches Five Feet or More in Depth. Contractor shall submit to the Town at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.
- B. Excavations Deeper than Four Feet.
1. If the Work involves excavating trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly within three (3) Days, and before the excavation is further disturbed, notify the Town in writing of any of the following conditions:
    - a. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
    - b. Subsurface or latent physical conditions at the site differing from those indicated by information made available to bidders prior to the deadline for submitting bids.
    - c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract



2. The Town shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in Article 9.1 Change Orders and Time Extensions.
3. In the event that a dispute arises between the Town and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

## **ARTICLE 8 -PROSECUTION OF THE WORK**

### **8.1 Contractor's Means and Methods.**

- A. Contractor is solely responsible for the means and methods utilized to perform the Work. Contractor shall perform all Work in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor warrants that all employees and Subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Contractor represents that it, its employees and Subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Contract. Contractor shall perform the Work in full compliance with all applicable state, federal and local laws and to the all jurisdictions having authority over the Project.

### **8.2 Construction Schedule.**

- A. General Requirements. The schedule shall be prepared in a critical path method format and in an electronic scheduling program acceptable to the Town and as specified in the Contract Documents. Contractor shall deliver the schedule and all updates to the Town in both paper and electronic form. The electronic versions shall be in the format and include all data used to prepare the schedule.
- B. Schedule. The receipt or approval of any schedules by the Town shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract Time. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Town.

- C. Schedule Contents. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and “float time” for all “slack” or “gaps” in the non-critical activities. The schedule shall include appropriate time allowances and constraints for Submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests. All float shall be owned by the Project. Schedules indicating early or late completion shall not modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by the Town.
- D. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the Town: (1) prior to the start of construction, if there are any changes to the initial schedule; (2) with each progress payment request; and (3) whenever requested to do so by the Town. The Town may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule. Upon the Town’s request, Contractor shall submit any schedules or updates to the Town in the native electronic format of the software used to create the schedule. Contractor shall also submit schedules showing a two-week detailed look-ahead at weekly meetings conducted with the Town. The two-week look-ahead schedule shall clearly identify all staffing and other resources which in the Contractor’s judgment are needed to complete the Work within the Contract Time, and it shall clearly state the number of staff to be used on each daily segment of the Work.
- E. Acceptance. Acceptance of the schedules by the Town will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Contractor from Contractor’s full responsibility therefor.

### 8.3 Time for Completion and Liquidated Damages.

- A. Time for Completion. The time for completion set forth in Article 2 of the Contract for Construction shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The Town is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the Town’s receipt or acceptance of the Contractor’s proposed earlier completion date. Any difference in time between the Contractor’s early completion and the Contract Time shall be considered a part of the Project float. Contractor shall not be entitled to compensation, and the Town will not compensate Contractor, for delays which impact early completion. Contractor shall not, under any circumstances, receive additional compensation from the Town (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.
- B. Liquidated Damages. If the Work is not completed within the Contract Time(s), it is understood that the Town will suffer damage. In accordance with Government Code

section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the Town as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

- C. Inclement Weather. Contractor shall abide by the Town's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.
- D. Extension of Time. Contractor's entitlement to an extension of the Contract Times is limited to a Town-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the Town-caused delay extends the critical path beyond the previously approved Contract Time. The Town shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Contractor shall not be entitled to an adjustment in the Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor. If approved, the increase in time required to complete the Work shall be added to the Contract Time.
- E. Force Majeure. In accordance with subparagraph "D" above, the Contractor shall not be charged liquidated damages, and the Town shall not be responsible, for any delays to the critical path resulting from a Force Majeure Event. If a delay to the critical path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays.
- F. No Damages for Reasonable Delay. The Town's liability to Contractor for delays for which the Town is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the Town be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable Town delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.
- G. Procedure for Time Extensions and Delay Damages. Contractor shall not be entitled to any extension of time unless Contractor properly notices the delay and adjustment to compensation and requests a Change Order in accordance with Article 9.1 Change Orders and Time Extensions. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension.

8.4 Contractor's Responsibility for Work.

- A. Responsibility for, and security of, all Work and materials related to Contractor's Work is the responsibility of Contractor until final acceptance of the Contractor's Work by the Town. The Town shall not be held responsible for the care or protection of any material or parts of the Work prior to final acceptance. Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work and all loss or damage shall be borne by Contractor. The Contractor shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the Town will pay for repair or restoration to damaged Work in excess of 5% of the total Bid.

8.5 Occupancy.

- A. The Town reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

8.6 Securities for Money Withheld.

- A. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the Town to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the Town to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the Town or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

8.7 The Town's Right to Suspend/Terminate the Contract.

A. Suspension of Work by the Town.

1. The Town in its sole and absolute discretion for any reason or no reason whatsoever may at any time, with or without cause, suspend performance of all or any part of the Work by giving not less than five (5) Days written notice to the Contractor. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.
2. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise: (1) immediately discontinue Work on the date and to the extent specified in the notice; (2) place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent

required in the notice; (3) promptly make every reasonable effort to obtain suspension upon terms satisfactory to the Town of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and (4) continue to protect and maintain the Work including those portions on which Work has been suspended.

3. The Town shall not be liable for any additional costs, damages or anticipated profits incurred by Contractor or its Subcontractors and the Contract Price shall not be increased during the period of suspension, except the actual costs incurred by Contractor, excluding overhead and profit for (a) the purpose of safeguarding the Work and material and equipment in transit or at the Site during the period of suspension, (b) Contractor's or its Subcontractor's rented equipment which are maintained at the Site, or (c) other reasonable and unavoidable costs of shutting down the Work, or reassembling personnel and equipment resulting directly from such suspension. Contractor shall be granted an extension of the Contract Time equal to the number of days performance of Work is suspended; provided, however, that no actual costs or extension of Contract Time shall be granted if the suspension results from Contractor's non-compliance with the requirements of the Contract.

B. Termination for Cause by the Town.

1. In the sole estimation of the Town, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the Town may serve written notice upon the Contractor and its surety of the Town's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to the Town have been made for correction of said violations.
2. After expiration of the ten (10) Day period, the Town may terminate the Contract by providing a Notice of Termination to the Contractor. The Town may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project performance bond. If the Town takes over the Work, the Town may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.
3. Contractor shall not be entitled to receive any further payment hereunder as a result of such termination. Contractor and its surety shall be liable to the Town for any excess costs or other damages incurred by the Town to complete the Work, including professional services and expenses, reasonable overhead, profit, and

attorneys' fees. This payment obligation shall survive completion of the Project and termination or expiration of this Contract.

C. Termination for Convenience by the Town.

1. The Town may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, upon ten (10) Days written notice if the Town determines that a termination is in the Town's interest. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the Town, the extent of termination, and the effective date of such termination.
2. After receipt of Notice of Termination, and except as directed by the Town, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations: (1) stop Work as specified in the Notice; (2) complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents; (3) leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety; (4) terminate all subcontracts to the extent that they relate to the portions of the Work terminated; and (5) place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
3. In case of such termination for the Town's convenience, the Contractor shall be entitled to receive payment for Work actually completed by Contractor in conformity with this Contract prior to Contractor's receipt of Town's Notice and costs incurred by reason of such termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the Town's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Town no later than 30 Days after the effective date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the Town's Termination for Convenience." If the Town rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a Claim within thirty (30) Days of the rejection pursuant to Article 9.2.
4. Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to the Town.
5. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.
6. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the

Town may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the Town or the Contract is terminated.

7. If the Town terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

## 8.8 Defective Work.

### A. The Town May Correct Defective Work.

1. If Contractor fails to correct Defective Work, or to remove and replace rejected Work as required by the Town, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the Town may, after seven (7) Days written notice to Contractor, correct, or remedy any such deficiency.
2. In connection with such corrective or remedial action, the Town may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the Town has paid Contractor but which are stored elsewhere. Contractor shall allow the Town, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable the Town to exercise the rights and remedies to correct the Defective Work.
3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the Town correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Town shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.
4. If the Change Order is executed after all payments under the Contract have been paid by the Town and the Project retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of retention to be paid to the Town. If the Change Order is executed after release of the Project retention, an appropriate amount will be paid by Contractor to the Town. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the Town correcting Defective Work.

B. Acceptance of Defective Work.

1. If, instead of requiring correction or removal and replacement of defective Work, the Town prefers to accept it, the Town may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the Town's evaluation of and determination to accept such defective Work and for the diminished value of the Work. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the Town shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by the Town. If the acceptance of defective occurs after release of the Project retention, an appropriate amount will be paid by Contractor to the Town.

8.9 Completion and Acceptance of Work.

- A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection with the Town and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. Final Acceptance. The acceptance of the Work on behalf of the Town will be made by the Engineer. Such acceptance by the Town shall not constitute a waiver of defects. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Record Documents, and other documents required by the Contract Documents, the Town shall execute a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

8.10 Guarantee of Work.

- A. Neither the final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship. Contractor hereby guarantees that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this guarantee. Contractor hereby agrees to repair or replace, at the discretion of the Town, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from the date of the Notice of Completion of the Project without any expense whatever to the Town, ordinary wear and tear and unusual



abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. The Contractor shall remedy at its expense any damage to Town-owned or controlled real or personal property. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

- B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of Work that was corrected. Contractor shall perform such tests as the Town may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract Documents. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the reasonable satisfaction of the Town, the Town shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Town for any expenses incurred hereunder immediately upon demand.
- C. In addition to the warranty set forth in this Article, Contractor shall obtain for the Town all warranties that would be given in normal commercial practice and assign to the Town any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the Town with all warranty and guarantee documents prior to final acceptance of the Project by the Town as required.
- D. When specifically indicated in the Contract Documents or when directed by the Engineer, the Town may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the Town for installation by the Contractor to be voided or reduced, Contractor shall indemnify the Town from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the Town for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.
- E. The Town shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary work to remedy the failure, defect, or damage. If the Contractor fails to promptly remedy any defect or damage, the Town shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.
- F. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance

with the Contract requirements, the Town may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

- G. This Article shall not limit Town's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. Nothing in the warranty or in the Contract Documents shall be construed to limit the rights and remedies available to the Town at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

## **ARTICLE 9 -CHANGE ORDERS; DISPUTE RESOLUTION**

### **9.1 Change Orders and Time Extensions.**

- A. Change Orders. All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. The Town, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Contractor's compensation and the time for completion shall be adjusted accordingly. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.
- B. Town Directive. The Town may direct changes in the Work by delivering a written directive. To the extent the work directive results in a change to compensation or time, Contractor must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Contractor's failure to timely request a Change Order shall constitute a waiver by Contractor of any adjustment to compensation or time extension for Work performed under the directive. The Town shall not be liable to Contractor for Work performed or omitted by Contractor in reliance on verbal orders.
- C. Contractor's Notice of Change/Delay. If Contractor intends to initiate a Change Order Request, then Contractor shall provide the Town with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:
  - 1. If due to unknown subsurface or latent physical conditions, within three (3) days from the discovery date or prior to the alterations of the conditions, whichever is earlier.
  - 2. If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) days from the date the Contractor discovers that the Force Majeure Event gives rise to a change, unless

that the conditions are such that notice within three (3) days is not possible or practicable.

3. If due to any other matter that may involve an adjustment to the Contract Time or the Contract Price, within seven (7) Days from the discovery date.

To be considered valid and complete, the notice of change/delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs and/or time. If the circumstances give rise to both a cost adjustment and time extension, Contractor shall submit the notice of change and notice of delay concurrently.

- D. Request for Change in Compensation and/or Extension of Time. Contractor shall submit a Change Order Request for any adjustment to Contractor's compensation and/or any extension of time. The Change Order Request shall be made prior to incurring any expense and within fourteen (14) Days from either Contractor's notice of change/delay or the Town's directive ordering the change. For any costs or information that cannot be determined at the time Contractor submits the Change Order Request, Contractor shall submit to the Town notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination. The Change Order Request shall include all of the following information (unless inapplicable to the change):

1. A detailed description of the circumstances giving rise to the request;
2. A complete itemized cost proposal, including itemized pricing for first tier Subcontractors;
3. Supporting documentation for all costs;
4. A time impact analysis showing the impact of the delay to the critical path to completion;
5. If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and
6. Certification to the accuracy of the Change Order Request under penalty of perjury.

The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. The Town may demand, and Contractor shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Contractor shall provide the requested additional information within five (5) Days of the request.

- E. Town's Final Decision on Change Order; Ordered Changes. If the Town denies the Change Order Request or disagrees with the proposal submitted by Contractor, it will notify the Contractor, and the Town will provide its opinion of the appropriate price

and/or time extension. If no agreement can be reached, the Town shall have the right to order the Work performed on a time and materials basis or to issue a unilateral Change Order setting forth the Town's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The Town shall also have the right to order changes in the Work to be performed promptly by the Contractor on a time and materials basis or to issue a unilateral Change Order setting forth the Town's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The Town's determination shall become final and binding if the Contractor fails to submit a claim in writing in accordance with Article 9.2 to the Town within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the Town may reasonably require.

F. Contractor's Waiver of Further Relief.

1. Contractor recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the Town or available to the Town through other means, is not a mere formality but is of crucial importance to the ability of the Town to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.
2. **CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE/DELAY AND/OR CHANGE ORDER REQUEST, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**

G. Change Order Format. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order. The Town may designate the forms to be used for notices, requests, and Change Orders. If so designated, Contractor may only use such forms. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the Town's Change Order form in an attempt to reserve additional rights.

H. Determining Adjustments to Compensation.

1. Limitation on Costs. Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.
2. Unit Price Change Orders.
  - a. When the actual quantity of a Unit Price Work item varies from the Bid Schedule, compensation for the change in quantity will be calculated by multiplying the actual quantity by the unit price. This calculation may result in either an additive or deductive Change Order. Bid items included on the Bid Schedule may be deducted from the Work in their entirety without any negotiated extra costs. Because Unit Price Work includes overhead and profit as determined by Contractor at the time of its Bid submission, no mark up or deduction for overhead and profit will be allowed.
  - b. The Town or Contractor may initiate a Change Order or Change Order Request to adjust the Contract Price in accordance with Contractor Documents based on actual quantities of Unit Price Work. The Town or Contractor may make a claim for an adjustment in the Unit Price in accordance with the Contract Documents if: (1) the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; (2) there is no corresponding adjustment with respect to any other item of Work; and (3) Contractor believes that Contractor is entitled to an increase in unit price as a result of having incurred additional expense or the Town believes that the Town is entitled to a decrease in unit price and the parties are unable to agree as to the amount of any such increase or decrease.
3. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the Contractor and the Town.
4. Time and Materials Change Orders. The Town may direct the Contractor to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the Contractor exceeds at its own risk.
5. Federally Funded Projects. For any change in price to the Contract, general and administrative expenses shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E, and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the Additional Work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

6. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows:
  - a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Estimated labor hours must only include hours for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the markup percentages as outlined below. Note that no separate allowances for warranty expense will be allowed as a direct cost of a change order. Costs attributed to warranty expenses will be considered to be covered by the markup. Labor burden allowable in Change Orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price Change Orders will be examined at the conclusion of the Project and an adjustment to the approved Change Orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.
  - b. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon Supplier or manufacturer's invoice.
  - c. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The Contractor shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each items of equipment shall be the rate resulting in the least total cost to the Town for the total period of use. The Town shall make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of \$1,000 or less. The rental time to be paid for equipment shall be the time

the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns. All equipment shall, in the opinion of the Town, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer. Before construction equipment is used on any Additional Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Town, in duplicate, a description of the equipment and its identifying number. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.

- d. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:
- (i) "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and Subcontractors at cost only, without mark-up. Contractor shall provide the Town with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the Town may reasonably request.
  - (ii) For Work performed by the Contractor's forces the allowed mark-up shall not exceed fifteen (15%) percent of labor costs, ten percent (10%) of material costs, and ten percent (10%) of the cost of tools and equipment use.
  - (iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Subcontractor's Net Cost of the Work to which the Contractor may add up to five percent (5%) of the Subcontractor's Net Cost.
  - (iv) For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor and Contractor may each add up to an additional five percent (5%) of the Net Cost of the lower tier subcontractor.
  - (v) No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the Town exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.
- e. Documentation of Time-and-Material Costs.
- (i) T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Town's for an approval signature each day that Work is performed on a time-and-material basis.

The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the Town's agreement to Contractor's entitlement to the cost.

- (ii) T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the Additional Work.
- f. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Contractor's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:
  - (i) Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Work;
  - (ii) Office Expenses. Expenses of Contractor's principal and branch offices;
  - (iii) Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;
  - (iv) Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
  - (v) Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
  - (vi) Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
  - (vii) Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
  - (viii) Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;



- (ix) Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- (x) Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

## 9.2 Procedure for Resolving Claims.

- A. Prerequisites. Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 9.1, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.
- C. Claims. For purposes of this Article, "Claim" means a separate demand by the Contractor for:
  - 1. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the Town;
  - 2. Payment by the Town of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled;  
or
  - 3. An amount the payment of which is disputed by the Town.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

- D. Filing Claims. Claims governed by this Article may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the Town and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.
- E. Documentation. The Contractor shall submit all Claims in the following format:
1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made
  2. List of documents relating to Claim:
    - a. Specifications
    - b. Drawings
    - c. Clarifications (Requests for Information)
    - d. Schedules
    - e. Other
  3. Chronology of events and correspondence
  4. Narrative analysis of Claim merit
  5. Analysis of Claim cost, including calculations and supporting documents
  6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested
- F. Town's Response. Upon receipt of a Claim pursuant to this Article, the Town shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed

portion of the Claim will be processed and made within 60 Days after the Town issues its written statement.

1. If the Town needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Town's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the Town shall have up to three (3) Days following the next duly publicly noticed meeting of the Town's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
  2. Within 30 Days of receipt of a Claim, the Town may request in writing additional documentation supporting the Claim or relating to defenses or Claims the Town may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Town and the Contractor. The Town's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
- G. Meet and Confer. If the Contractor disputes the Town's written response, or the Town fails to respond within the time prescribed, the Contractor may so notify the Town, in writing, either within 15 Days of receipt of the Town's response or within 15 Days of the Town's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Town shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- H. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the Town shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the Town issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Town and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.
1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.
  3. Unless otherwise agreed to by the Town and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
  4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.
- J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
  2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

K. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.
  2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the Town.
  3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the Town.
  4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably be known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.**
- L. Non-Waiver. The Town's failure to respond to a Claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

**ARTICLE 10 - MEASUREMENT; PAYMENT**

10.1 Cost Breakdown.

- A. Lump Sum Work. Contractor shall furnish on forms approved by the Town within ten (10) Days of the Notice to Proceed, a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule of values, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's applications for payment. Contractor shall submit the schedule of values prior to submitting its first application for payment, and the Town will not issue any payment until it receives and approves the schedule of values.
- B. Unit Price Work. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all

Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and or profit for each separately identified item. Unless otherwise specified, payment will be based on the actual quantities of Work as verified and approved by the Engineer, based on the price per unit as set forth in the Bid Schedule.

## 10.2 Progress Estimates and Payment.

- A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid. Contractor shall include any amount earned for authorized Change Orders. Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.
- B. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the Town has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.
- C. The Town may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:
  1. Payments which may be past due and payable for just claims against Contractor or any Subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
  2. Defective Work not remedied.
  3. Failure of Contractor to make proper payments to his Subcontractor or for material or labor.
  4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
  5. Damage to another contractor or a third party.
  6. Amounts which may be due the Town for claims against Contractor.
  7. Failure of Contractor to keep the Record Drawings up to date.
  8. Failure to provide update on construction schedule as required herein.

9. Site cleanup.
  10. Failure to comply with Contract Documents.
  11. Liquidated damages.
  12. Legally permitted penalties.
- D. The Town may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (C)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the Town shall be deemed the agent of Contractor and any payment so made by the Town shall be considered as a payment made under contract by the Town to Contractor and the Town shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The Town will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.
- E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The Town shall make the progress payment within 30 Days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the Town to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of Days by which the Engineer exceeds the seven (7) Day requirement.
- F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the Town.
- G. The Town shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

### 10.3 Final Acceptance and Payment.

- A. Following the Town's acceptance of the Work, the Contractor shall submit to the Town a written statement of the final quantities of unit price items for inclusion in the final payment request. The Town shall have the right to adjust any estimate of quantity and to correct any error made in any estimate for payment.
- B. When the Work has been accepted there shall be paid to Contractor a sum equal to the Contract Price less any amounts previously paid Contractor and less any amounts withheld by the Town from Contractor under the terms of the Contract. The final five percent (5%), or the percentage specified in the Notice Inviting Bids where the Town has adopted a finding of substantially complete, shall not become due and payable until as required by Public Contract Code section 7107. If the Contractor has placed securities with the Town as described herein, the Contractor shall be paid

a sum equal to one hundred percent (100%) of the Contract Price less any amounts due the Town under the terms of the Contract.

- C. Unless Contractor advises the Town in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Notice Inviting Bids where the Town has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to the Town of all claims and all liability to Contractor for all things done or furnished in connection with this Work and for every act of negligence of the Town and for all other claims relating to or arising out of this Work. If Contractor advises the Town in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the Town may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the Town with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the faithful performance bond, labor and material payment bond, or from any other obligation under this Contract.
- D. In case of termination of the Contract any unpaid balance shall be and become the sole and absolute property of the Town to the extent necessary to repay the Town any excess in the cost of the Work above the Contract Price.
- E. Final payment shall be made no later than 60 Days after the date of acceptance of the Work by the Town or the date of occupation, beneficial use and enjoyment of the Work by the Town including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the Town and the Contractor, the Town may withhold from the final payment an amount not to exceed 150% of the disputed amount.
- F. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.

## **ARTICLE 11 -MISCELLANEOUS**

### **11.1 Patents.**

- A. Contractor shall hold and save the Town, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this Contract.



## 11.2 Document Retention & Examination

- A. In accordance with Government Code section 8546.7, records of both the Town and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. Contractor shall make available to the Town any of the Contractor's other documents related to the Project immediately upon request of the Town. In addition to the State Auditor rights above, the Town shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the Town, for a period of four (4) years after final payment.

## 11.3 Notice.

- A. All notices shall be in writing and either served by personal delivery or mailed to the other party. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to the Town shall be addressed to the Town as designated in the Notice Inviting Bids unless the Town designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

## 11.4 Notice of Third Party Claims

- A. Pursuant to Public Contract Code section 9201, the Town shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The Town is entitled to recover reasonable costs incurred in providing such notification.

## 11.5 State License Board Notice

- A. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

## 11.6 Assignment of Contract

- A. Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the Town. Any assignment or change of Contractor's name of legal entity without the written consent of the Town shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered

or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

11.7 Change In Name And Nature Of Contractor's Legal Entity.

- A. Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the Town in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect the Town's rights under the Contract, including but not limited to the bonds.

11.8 Prohibited Interests

- A. No Town official or representative who is authorized in such capacity and on behalf of Town to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

11.9 Controlling Law

- A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

11.10 Jurisdiction: Venue

- A. Contractor and any Subcontractor, Supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of Marin County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

11.11 Cumulative Remedies.

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

11.12 Survival of Obligations.

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

11.13 Headings.

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

11.14 Assignment of Antitrust Actions. In accordance with §7103.5(b) of the California Public Contract Code, Contractor and Subcontractors must conform to the following requirements:

- A. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.
- B. This assignment must be made and become effective at the time the awarding body tenders to Contractor, without further acknowledgment by the parties.

11.15 Other Legal Provisions.

- A. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify Town in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to Town, he shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.
- C. Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

- D. No Town official or representative who is authorized in such capacity and on behalf of Town to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.
  
- E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by Town, at no increase in Contract Price or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

## 00 73 13 – SPECIAL CONDITIONS

### ARTICLE 1 -SCOPE OF WORK

#### 1.1 Locations of the Project.

- A. 378 Scenic Road, and
- B. 78 Wreden Avenue

#### 1.2 Scope of Work.

- A. The Scope of Work at 378 Scenic Road includes constructing a new reinforced concrete wall will be constructed to repair a small landslide that occurred along a relatively steep cut slope on the inboard side of the roadway. The reinforced concrete retaining wall will be up to about 35-feet-long, 8-feet-tall and will be supported on a continuous spread footing. The wall alignment will be configured as to provide an eight-foot-wide paved parking space adjacent to the structure. The wall will be backfilled with rip rap and the slope on either end of the structure will be trimmed to reduce the risk of future raveling.
- B. The Scope of Work at 78 Wreden Avenue consists of constructing a new reinforced concrete retaining wall downslope of the existing wall. The new wall is approximately 35-feet-long, up to about eight feet in retained height and will be supported on drilled shaft foundations. The new wall will be constructed a few feet downslope of the existing wall and will provide additional lateral support for the structure. An existing concrete culvert which terminates at the face of the existing concrete wall will be extended through the new wall and will discharge into the swale below. A new dissipator is also planned below the new retaining wall to reduce the potential for erosion.

### ARTICLE 2 -MODIFICATIONS TO THE GENERAL CONDITIONS

#### 2.1 Article 5.10 Water Quality Management and Compliance

Article 5.10 of the General Conditions is supplement by the following:

- A. Contractor shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) for the Project site based on the appropriate Risk Level requirements, and draft and coordinate submittal of all Construction General Permit related documents with Town's Legally Responsible Person and/or Authorized Signatory as those terms are defined in the Permit. The Contractor shall submit the SWPPP to the Town for review not less than fifteen (15) Days prior to the start of on- site construction work. Town will file the Notice of Intent and pay the filing fee.
- B. The SWPPP shall be developed by a Qualified SWPPP Developer and implemented by a Qualified SWPPP Practitioner as those terms are defined in the Construction General Permit and shall include industry standard requirements for water quality control including but not be limited to the following:

1. Sediment and erosion control measures to manage sediment and erosion including vegetative practices, structural control, silt fences, straw dikes, sediment controls or operator controls as appropriate. Storm water management measures shall be instituted as required, including velocity dissipaters, and solid waste controls shall address controls for building materials and offsite tracking of sediment.
2. Wastewater and storm water management controls to divert offsite surface flows around the Project site and to divert surface flows within the Project area away from areas of open earth or stockpiles of building and other materials. Wastewater from general construction activities, such as drain water collection, aggregate processing, concrete batching, drilling, grouting, or other construction operations, shall not enter flowing or dry watercourses without having met the authorized non-storm water discharge requirements listed in State Board Water Quality Order No. 2009-0009-DWQ, Section III.C., including proper notification to the Regional Water Board.
3. Pollution prevention measures including methods of dewatering, unwatering, excavating, or stockpiling earth and rock materials which include prevention measures to control silting and erosion, and which will intercept and settle any runoff of sediment-laden waters.
4. Turbidity prevention measures for prevention of excess turbidity including, but are not restricted to, intercepting ditches, settling ponds, gravel filter entrapment dikes, flocculating processes, recirculation, combinations thereof, or other approved methods that are not harmful to aquatic life. All such wastewaters discharged into surface waters, shall contain the least concentration of settleable material possible, and shall meet all conditions of section 402, the National Pollutant Discharge Elimination System (NPDES) permit.
5. Overall construction site management measures to address changes at the Project site as the Project moves through different phases and changes that account for rainy and dry season management practices.
6. Pollution control measures and construction activity methods that will prevent entrance, or accidental spillage, of solid matter, contaminants, debris, or other pollutants or wastes, into streams, flowing or dry watercourses, lakes, wetlands, reservoirs, or underground water sources. Such pollutants and wastes include, but are not restricted to: refuse, garbage, cement, sanitary waste, industrial waste, hazardous materials, radioactive substances, oil and other petroleum products, aggregate processing, tailings, mineral salts, and thermal pollution.
7. Control measures for stockpiled or deposited materials prohibiting the stockpile or deposit of excavated materials, or other construction materials, near or on stream banks, lake shorelines, or other watercourse perimeters where they can be washed away by high water or storm runoff, or can, in any way, encroach upon the watercourse.
8. Develop and implement a Rain Event Action Plan (REAP), if required, that must be designed and implemented to protect all exposed portions of the site 48 hours prior to any likely precipitation event.

9. Monitoring, reporting and record keeping, as necessary to achieve compliance with applicable Permit requirements, including but not limited to annual reports and rain event reports.
- C. Before any Construction General Permit related documents, including the SWPPP, rain event reports, or annual reports may be submitted to the State Board or implemented on the Project site, they must first be reviewed and approved by Town.
  - D. Town retains the right to procure and maintain coverage under the Construction General Permit for the Project site if the Contractor fails to draft a SWPPP or other Construction General Permit related document, or fails to proceed in a manner that is satisfactory to Town. Town reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately maintained compliance with the Construction General Permit shall be Town's sole determination. In the event that Contractor has failed or is unable to maintain compliance with the Construction General Permit, any costs or fines incurred by Town in implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.

**END OF SPECIAL CONDITIONS**

## **SPECIFICATIONS**

**"THE FOLLOWING SPECIFICATIONS ARE INCORPORATED HEREIN BY REFERENCE AS IF SET FORTH IN THEIR ENTIRETY:**

### **DIVISION 02 – TECHNICAL SPECIFICATIONS**

- 2210 – Site Grading
- 2270 – Slope Protection and Erosion Control
- 2362 – Drilled Cast-in-Place Concrete Piers
- 2420 – Retaining Wall Drain and Backfill
- 2513 – Asphaltic Concrete Paving
- 2578 – Asphalt Concrete Pavement Overlay
- 3315 – Cast-In-Place Reinforced Concrete



SECTION 2210  
SITE GRADING

PART 1.0 – GENERAL

1.01 SCOPE OF WORK

- A. Work under this section consists of clearing and removal of debris, grading, excavation, disposal of excess or unsuitable material, filling and compacting, all in accordance with the lines, grades, and cross-sections shown on the contract drawings.

1.02 QUALITY ASSURANCE

- A. Review - No site earthwork shall be performed without prior notification of the Engineer. The Engineer shall be notified at least 48 hours prior to commencement of any earthwork.
- B. Site Information - The Contractor shall satisfy himself as to the quality and nature of the materials which are required to be moved and other work to be performed, and shall notify the Owner of any differences between site conditions shown on the drawings and actual conditions prior to commencement of work.
- C. Test Method - Relative compaction will be determined in general accordance with ASTM Test Methods D1557 and D2167, D2922, or D3017.

PART 2.0 – PRODUCTS

2.01 FILL MATERIAL

- A. General - Non-organic material, soil and rock materials obtained from on-site excavations may be used as fill as specified herein.
- B. Select Fill - Select fill material shall be soil and rock, which is free of perishable material, rubble and building debris, and shall conform to the following requirements.

<u>Size</u>	<u>Percent Finer</u>
6 inch	100
4 inch	90 - 100
No. 200	10 - 90

Plasticity Index: 25 percent maximum

Select fill shall be used in all fills intended to support structures, roads, and utilities.

- C. Random Fill - Random fill shall be soil and rock material from on-site excavation which does not meet the requirements for "select fill".

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Random fill may be used in non-structural locations. Random fill material may be used only in specific locations approved in advance by the Engineer.

- D. Imported Fill - If it is necessary to import fill material, such material shall meet the requirements for select fill.

## PART 3.0 – EXECUTION

### 3.01 GENERAL

Excavating and grading shall be performed in conformance with the alignment, grade and cross-sections indicated on the drawings or as established by the Engineer.

### 3.02 SPILLAGE, DUST AND EROSION CONTROL

- A. Spillage - The Contractor shall prevent spillage when hauling on or adjacent to any public street or highway. In the event that spillage occurs, the Contractor shall remove all spillage and sweep, wash or otherwise clean such streets in accordance with City, County and/or State requirements.
- B. Dust and Erosion Control - The Contractor shall take all precautions needed to prevent a dust nuisance to adjacent public and private properties and to prevent erosion and transportation of soil due to work under this contract. Any damage so caused by the Contractor's work shall be corrected or repaired by the Contractor.

### 3.03 SITE PREPARATION

The Contractor shall strip all debris and organic matter from areas to be graded and shall haul this material off-site for legal disposal.

### 3.04 EXCAVATION

Unclassified excavation shall consist of excavation of all materials of whatever character encountered in the work. All excavation work shall conform to OSHA standards.

### 3.05 COMPACTED FILL

- A. Placement and Conditioning – All fill material shall be placed in horizontal layers eight inches or less in loose thickness, conditioned by watering or drying and mixing as needed, to a moisture content near the optimum moisture content. Where so designated, the moisture content before compaction shall be within the specified range.
- B. Compaction - Fill material shall be compacted with a sheepsfoot roller or other approved equipment to achieve at least 90 percent relative compaction, unless otherwise specified.
- C. Re-compaction - Field density tests will be performed by the Engineer to determine the degree of compaction obtained. Where compaction is less than that required, additional

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compactive effort and the Contractor, as necessary, shall make adjustment of the moisture content until the required compaction is obtained.

The Contractor shall be responsible for placing and compacting approved fill material in accordance with the specifications. Should the Contractor fail to meet the density requirements, he shall reduce his rate of haul, furnish additional spreading and/or compaction equipment, remove and replace the fill material, or make any other adjustments necessary to achieve a satisfactorily compacted fill.

- D. Seasonal Limits - No fill shall be compacted during periods of rain nor on ground which is saturated or has standing water. Loose soil, which has been stockpiled and wetted by rain or any other means, shall not be used until the moisture content is within limits required by the Engineer.

### 3.06 SLOPES AND FINAL GRADING

- A. Slopes - The slope of the ground surfaces, both during and after grading, shall be no steeper than 2 horizontal to 1 vertical, unless otherwise designated on the plans.
- B. Finish Grading - Final grades shall conform to the lines and grades shown on the plans. After completion, excess fill material shall be removed from slopes and the slopes trimmed to expose a dense surface and a uniform finished surface in compacted fill.

All non-slope fill surfaces shall be graded smooth, low spots filled in, and the surface sloped for drainage and rolled with rubber-tired equipment to seal it against excessive infiltration of water. Stockpile areas and haul roads shall be restored to the original ground contours and condition using compacted fill. Excess earth and all other unsuitable material shall be removed from the site.

### 3.07 CLEAN-UP

- A. The site is to be left in a neat, safe, and protected condition acceptable to the Owners and Engineer.

END OF SECTION

SECTION 2270  
SLOPE PROTECTION AND EROSION CONTROL

PART 1.0 – GENERAL

1.01 SCOPE OF WORK

This work includes all erosion control required and necessary during the course of construction and the maintenance of erosion control throughout the first winter following completion of construction. Refer to the project-specific Storm Water Pollution Prevention and Erosion Control Plan for further requirements.

1.02 QUALITY ASSURANCE

- A. Notification - No site work shall be performed without notification of the Engineer at least two full working days prior to commencement of work.
- B. Site Information - The Contractor shall satisfy himself as to the nature and quantity of materials to be moved and other work to be performed, and any differences between site conditions shown on the drawings and actual conditions immediately prior to commencement of work.

PART 2.0 – PRODUCTS

- 2.01 Culvert Pipe - Pipe for use as a temporary culvert shall be sufficient size and strength for the intended, i.e. temporary roadway crossing, non-structural drainage diversion, or other such use meeting the intent of California RWQCB Best Management Practices, Erosion and Sediment Control (BMP ESC 22). Pipe that is to be part of the permanent construction shall conform to the Plans.
- 2.02 Filter Cloth - Filter cloth to be used as part of temporary erosion control shall be commercially available product manufactured for such applications.
- 2.03 Silt Fence - Fence material shall be wood posts, steel posts, filter fabric and backing fabric manufactured for temporary applications and meeting the requirement of BMP ESC 50.
- 2.04 Straw Wattles - Straw wattles shall be commercially available baled straw, with bale ties sufficiently strong to hold the bales intact for the temporary erosion control. Straw wattles shall consist of North American Green Sedimax – SWB9 or approved equal.
- 2.05 Hydroseed - Hydroseed shall consist of a mixture of seed, fertilizer, and stabilizing emulsion, or any combination therefore, with fiber and water. The seed mix shall be as shown on the plans or other, proposed by a reputable local licensed landscape contractor familiar with the soil and climate conditions. The proposed seed mix shall be submitted to the Engineer for approval at least two working days prior to expected use. Hydroseeded areas shall have uniform coverage and color.

- 2.06 Erosion Control Mat - Erosion control mats or blankets are biodegradable or synthetic mats that are used for temporary or permanent stabilization of disturbed soils. Erosion control mats to be used are North American Green S150 or approved equal.
- 2.07 Jute Netting - Shall be cloth of a uniform plain weave of undyed and unbleached single-jute yarn, 48 inches in width (plus or minus 1 inch) and weighing an average of 0.9 pounds per square yard of cloth (plus or minus 5 percent). The yarn shall be of a loosely twisted construction and shall not vary in thickness by more than one half its normal diameter.

### PART 3.0 – EXECUTION

- 3.01 Drainage - During construction, all fill surfaces shall be sloped to provide positive surface drainage to prevent ponding of water. In the event of oncoming rainy weather, the Contractor shall roll the surface with smooth rollers or rubber-tired equipment to seal the surface against excessive infiltration of water. Temporary drains and ditches shall be provided by the Contractor as necessary.
- 3.02 Erosion Control during Construction - The Contractor shall take all measures necessary to provide and maintain erosion control devices in order to protect slope areas and adjacent properties from storm damage and flood hazard originating from the site. Temporary erosion control devices such as straw bale barriers and silt fences shall be maintained throughout the construction period. The Contractor shall maintain slopes in their as-graded condition until all slopes are in satisfactory compliance with the job specifications.
- 3.03 Temporary Access - The Contractor shall construct temporary access roads only in the locations shown on the Plans and approved in advance by the Engineer and Owner. Temporary culverts shall be installed where necessary to maintain drainage, such as along existing gutters and natural drainage way crossings to conform to the intent of BMP ESC 22. All fills placed for temporary roads shall be compacted to at least 85% relative density, or greater, sufficient to minimize sloughing and erosion.
- 3.04 Silt Fences - Silt fences shall be constructed to encircle each immediate work area, around trees and other features designated to be protected and in other locations required to provide effective erosion protection. Silt fences shall be built as specified under BMP ESC 50.
- 3.05 Straw Wattles - Straw Wattles shall be constructed in the locations shown on the plans and at other locations required for effective control of erosion. Straw wattles shall be constructed as specified under BMP ESC 51.
- 3.06 Hydroseeding - Upon completion of all earthwork, the excavated and graded surfaces, including haul roads and other areas disturbed during construction, shall be hydroseeded in accordance with Caltrans Standard Specification, Section 20-3.

The surface shall be roughened as necessary and hydroseeded with components

compatible with the soil and climate conditions.

- 3.07 Erosion Control Mat – Following placement of hydroseed, all constructed, re-graded or disturbed slopes shall be covered with erosion control mats installed per the manufacturer’s recommendations . Adjacent lengths of erosion control mats shall overlap four inches along all edges and shall be secured to the slope by wooden pegs, wire pins, or other approved devices to prevent movement of the netting after it has been placed.
- 3.08 Permanent Surface Drainage - The Contractor shall furnish and install permanent surface drainage including earth lined ditches above the retaining walls as shown on the Plans. Surface water collected in the V-ditch shall be collected in drop inlets and discharged into the existing storm drainage system.
- 3.9 First Winter Maintenance - After completion of all other work, the Contractor shall maintain all surface and subsurface drainage facilities and erosion control measures for six months or through the following April 15, whichever is longer. Such maintenance shall include, but not be limited to, repair of erosion gullies, reseeding of eroded areas, backfilling, clean out of ditches, re-excavation of drainage swales and sediment basins, and other work necessary to fully control surface and subsurface water.

END OF SECTION

SECTION 2270  
SLOPE PROTECTION AND EROSION CONTROL

PART 1.0 – GENERAL

1.01 SCOPE OF WORK

This work includes all erosion control required and necessary during the course of construction and the maintenance of erosion control throughout the first winter following completion of construction. Refer to the project-specific Storm Water Pollution Prevention and Erosion Control Plan for further requirements.

1.02 QUALITY ASSURANCE

- A. Notification - No site work shall be performed without notification of the Engineer at least two full working days prior to commencement of work.
- B. Site Information - The Contractor shall satisfy himself as to the nature and quantity of materials to be moved and other work to be performed, and any differences between site conditions shown on the drawings and actual conditions immediately prior to commencement of work.

PART 2.0 – PRODUCTS

- 2.01 Culvert Pipe - Pipe for use as a temporary culvert shall be sufficient size and strength for the intended, i.e. temporary roadway crossing, non-structural drainage diversion, or other such use meeting the intent of California RWQCB Best Management Practices, Erosion and Sediment Control (BMP ESC 22). Pipe that is to be part of the permanent construction shall conform to the Plans.
- 2.02 Filter Cloth - Filter cloth to be used as part of temporary erosion control shall be commercially available product manufactured for such applications.
- 2.03 Silt Fence - Fence material shall be wood posts, steel posts, filter fabric and backing fabric manufactured for temporary applications and meeting the requirement of BMP ESC 50.
- 2.04 Straw Wattles - Straw wattles shall be commercially available baled straw, with bale ties sufficiently strong to hold the bales intact for the temporary erosion control. Straw wattles shall consist of North American Green Sedimax – SWB9 or approved equal.
- 2.05 Hydroseed - Hydroseed shall consist of a mixture of seed, fertilizer, and stabilizing emulsion, or any combination therefore, with fiber and water. The seed mix shall be as shown on the plans or other, proposed by a reputable local licensed landscape contractor familiar with the soil and climate conditions. The proposed seed mix shall be submitted to the Engineer for approval at least two working days prior to expected use. Hydroseeded areas shall have uniform coverage and color.

- 2.06 Erosion Control Mat - Erosion control mats or blankets are biodegradable or synthetic mats that are used for temporary or permanent stabilization of disturbed soils. Erosion control mats to be used are North American Green S150 or approved equal.
- 2.07 Jute Netting - Shall be cloth of a uniform plain weave of undyed and unbleached single-jute yarn, 48 inches in width (plus or minus 1 inch) and weighing an average of 0.9 pounds per square yard of cloth (plus or minus 5 percent). The yarn shall be of a loosely twisted construction and shall not vary in thickness by more than one half its normal diameter.

### PART 3.0 – EXECUTION

- 3.01 Drainage - During construction, all fill surfaces shall be sloped to provide positive surface drainage to prevent ponding of water. In the event of oncoming rainy weather, the Contractor shall roll the surface with smooth rollers or rubber-tired equipment to seal the surface against excessive infiltration of water. Temporary drains and ditches shall be provided by the Contractor as necessary.
- 3.02 Erosion Control during Construction - The Contractor shall take all measures necessary to provide and maintain erosion control devices in order to protect slope areas and adjacent properties from storm damage and flood hazard originating from the site. Temporary erosion control devices such as straw bale barriers and silt fences shall be maintained throughout the construction period. The Contractor shall maintain slopes in their as-graded condition until all slopes are in satisfactory compliance with the job specifications.
- 3.03 Temporary Access - The Contractor shall construct temporary access roads only in the locations shown on the Plans and approved in advance by the Engineer and Owner. Temporary culverts shall be installed where necessary to maintain drainage, such as along existing gutters and natural drainage way crossings to conform to the intent of BMP ESC 22. All fills placed for temporary roads shall be compacted to at least 85% relative density, or greater, sufficient to minimize sloughing and erosion.
- 3.04 Silt Fences - Silt fences shall be constructed to encircle each immediate work area, around trees and other features designated to be protected and in other locations required to provide effective erosion protection. Silt fences shall be built as specified under BMP ESC 50.
- 3.05 Straw Wattles - Straw Wattles shall be constructed in the locations shown on the plans and at other locations required for effective control of erosion. Straw wattles shall be constructed as specified under BMP ESC 51.
- 3.06 Hydroseeding - Upon completion of all earthwork, the excavated and graded surfaces, including haul roads and other areas disturbed during construction, shall be hydroseeded in accordance with Caltrans Standard Specification, Section 20-3.

The surface shall be roughened as necessary and hydroseeded with components



compatible with the soil and climate conditions.

- 3.07 Erosion Control Mat – Following placement of hydroseed, all constructed, re-graded or disturbed slopes shall be covered with erosion control mats installed per the manufacturer’s recommendations . Adjacent lengths of erosion control mats shall overlap four inches along all edges and shall be secured to the slope by wooden pegs, wire pins, or other approved devices to prevent movement of the netting after it has been placed.
- 3.08 Permanent Surface Drainage - The Contractor shall furnish and install permanent surface drainage including earth lined ditches above the retaining walls as shown on the Plans. Surface water collected in the V-ditch shall be collected in drop inlets and discharged into the existing storm drainage system.
- 3.9 First Winter Maintenance - After completion of all other work, the Contractor shall maintain all surface and subsurface drainage facilities and erosion control measures for six months or through the following April 15, whichever is longer. Such maintenance shall include, but not be limited to, repair of erosion gullies, reseeding of eroded areas, backfilling, clean out of ditches, re-excavation of drainage swales and sediment basins, and other work necessary to fully control surface and subsurface water.

END OF SECTION

SECTION 2362  
DRILLED, CAST-IN-PLACE CONCRETE PIERS

PART 1.0 – GENERAL

1.01 SCOPE OF WORK

- A. Work Included - The work in this section shall include the material, equipment and labor necessary to layout and construct drilled, straight shaft, vertical reinforced cast-in-place concrete piers, with or without temporary casing, in the locations and to the depths shown on the plans. The work shall include excavation dewatering, form work and other work incidental thereto.

1.02 QUALITY ASSURANCE

- A. Notification - No site work shall be performed without notification of the Engineer at least 2 full working days prior to commencement of work.
- B. Site Information - The Contractor shall satisfy himself as to the nature and quantity of materials likely to be encountered at the site and other work to be performed, and any differences between site conditions shown on the drawings and the actual conditions immediately prior to commencement of work.
- C. Inspection and Testing - The Contractor shall provide the Engineer with access to the work and all reasonable facilities for inspecting and checking the work.
- D. Conformance of Materials - All materials used in the construction of the drilled piers shall conform to the most recent version and relevant standards of the American Society for Testing and Materials (ASTM), American Concrete Institute (ACI), International Association of Foundation Drilling (ADSC), Caltrans Standard Specifications (Caltrans), or other standards specified by the Engineer.

PART 2.0 – PRODUCTS

2.01 CONCRETE

The concrete must have a quality of workability suitable for uniform and proper placement, and when cured must have the required strength and durability. The concrete shall have a minimum 28 day compressive strength ( $f'_c$ ) of 4,000 psi, unless otherwise specified by the Engineer.

When concrete is placed, the concrete slump shall conform to the requirement of the following Table measured in accordance with ASTM C-143.

<u>Slump Range</u>	<u>Conditions</u>
5" ± 1"	Placed in water-free uncased drilled hole.

- No reinforcement or reinforcement spaced 12 inches or greater, and

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- No under-reamed bell.
- 6" ± 1 1/2"                      Placed in water-free drilled hole.
- Temporary casing used, or
  - Reinforcement closer than 12 inches, or
  - Under-reamed bell
- 7" ± 1"                              Placed by tremie under water or under drilling mud.

## 2.02 STEEL REINFORCING

Steel reinforcement shall be deformed bars of ASTM grade 60 ksi steel and conform to Caltrans, Section 52. The length and size of the steel reinforcement shall be as shown on the plans.

## PART 3.0 – EXECUTION

### 3.01 EQUIPMENT

Pier excavations shall be drilled with a bucket or auger type drilling rig or other equipment of suitable capacity and power to excavate to the required diameter and depth. The diameter of the drilling bucket or auger bit, or the inside diameter of the casing, shall be equal to or larger than the required diameter, as shown on the plans. The drilling tools shall include carbide tipped augers and rock coring buckets as necessary for the conditions at the site. If necessary to prevent sloughing and caving, the Contractor shall use temporary steel casing of suitable size and strength.

### 3.02 ALIGNMENT

All pier excavations shall be located and aligned by the Contractor. The center of the top of the drilled hole shall not deviate more than three (3) inches in any direction from the center location shown on the plans.

### 3.03 DRILLED EXCAVATION

The pier excavation shall be performed under the observation of the Engineer, to confirm that subsurface conditions are as expected. The Contractor shall keep records of all pier excavation depths and the transition depth from soil to rock. Adjustments to the planned pier depths may be required by the Engineer

- A. Soil - Soil can be excavated with auger type equipment. If the drilled excavation is unstable and/or sloughing of the sides is occurring, then temporary casing must be used to maintain stability during and after drilling. As an alternate, drilling mud may be used to maintain hole stability, but only after the Contractor has fully described his proposed method, materials, and procedures and has received approval from the Engineer.
- B. Rock - Weathered rock can be excavated with some difficulty using heavy carbide tipped auger type equipment.

- C. Hard Rock - Hard rock is defined as a penetration rate slower than 30 minutes of continuous drilling per foot using a rock core barrel or other hard rock equipment with at least 15,000 pounds of rotary torque. The excavation and determination of hard rock, if a separate pay item, shall be confirmed by the Engineer.
- D. Cleanout - All water, loose soil, rocks and other debris shall be removed from the bottom of the drilled excavation prior to placing steel or concrete. Should small amounts of water or other material remain in the hole which cannot physically be removed to the satisfaction of the Engineer, then the Contractor shall place dry cement or sand-cement grout in the bottom of the hole as directed by the Engineer to stabilize the loose material.
- E. Ground Water - Should ground water be encountered during excavation operations, the pumping of water shall be required. The casing provided shall support the pier walls and prevent significant wall erosion due to flow of ground water. No more than two (2) inches of water will be permitted in the bottom of the pier at the time concrete placement begins, provided dry cement is placed in hole prior to placing concrete.
- F. Oversize Pier Head - If the pier excavation is fifty (50) percent or more greater than the design diameter within the upper five (5) feet, the upper five (5) feet of the shaft shall be formed to the design diameter.

#### 3.04 PLUMBNESS

Pier excavations shall be made as nearly vertical as possible. The tip of the pier shall vary no more than one-half (1/2) of the pier diameter from the designated ground surface location. Steel reinforcement shall be placed vertically and securely blocked so that all steel is covered with at least three (3) inches of concrete.

#### 3.05 PIER EXTENSION

If the Engineer directs a pier to be drilled two (2) feet or less deeper than that shown on the plans, reinforcing steel cage need not be extended. If the pier extension is greater than two (2) feet but no more than five (5) feet, each vertical cage bar shall be extended to within 0.5 feet of the bottom of the hole with a bar of equal size. Such extension bars shall overlap the cage bars by 36 diameters. Pier extensions greater than five (5) feet will be subject to redesign by the Engineer.

#### 3.06 CONCRETE PLACEMENT

Each pier excavation and reinforcing steel placement may be inspected by the Engineer prior to placement of concrete. Concrete placement shall start as soon as possible after the drilling, dewatering, cleanout and steel placement is completed and shall progress in a continuous operation so that not more than one hour elapses between beginning and completion of the concrete placement in any pier excavation. A record of the amount of concrete placed in each excavation shall be maintained by the Contractor.

- A. Concrete Placement in Dry Excavation - To prevent segregation, concrete shall be placed so that it does not deflect off the sides of the holes or reinforcing steel. Concrete shall not

free fall more than 10 feet. Tremie pipes with hoppers or flexible trunks, or approved alternate methods of placement shall be used where necessary. Concrete shall not rebound off the sides of the pier walls or reinforcing bars.

- B. Concrete Placement in Slurry Supported Excavation - Concrete placed in a slurry supported excavation or an excavation containing ground water in excess of 6 inches shall be tremied into the excavation. The concrete shall be placed by tremie pipe and hopper or pumped into the excavation with the pipe or pump hose placed at the bottom of the drilled hole. The pipe or pump hose shall be maintained at least 2 feet below the top of concrete as the level of concrete rises in the excavation. The top of concrete level shall be determined by probing.
- C. Concrete Placement in Cased Excavation - As concrete is placed, the casing shall be removed from the hole, however, the bottom of the casing shall be maintained no less than two (2) feet below the top of the concrete to prevent intrusion of the surrounding rock or soil into the concrete. The column of concrete shall not be permitted to separate during withdrawal of the casing, as evidenced by a rise of the surface of the concrete as the casing is being pulled. Hammering, vibrating the concrete internally or vibrating the casing, or other means shall be used, as necessary, to prevent separation. If the concrete column becomes separated, the steel reinforcing shall immediately be withdrawn from the hole and the concrete removed from the pier excavation before it sets up.
- D. Concrete Vibration - Concrete from bottom of the pier and extending to five (5) feet below grade shall not be vibrated. Concrete from five (5) feet below grade to top of the pier shall be thoroughly vibrated to ensure a well mixed and homogenous concrete.

END OF SECTION

SECTION 2420  
RETAINING WALL DRAIN AND BACKFILL

PART 1.0 - GENERAL

1.01 SCOPE OF WORK

- A. The work in this section shall include the materials equipment, and labor necessary to place retaining wall drainage and backfill behind the new retaining wall as shown on the plans. The purpose of this work is to prevent hydrostatic pressure on the wall and to restore grades to match existing topography.
- B. Site Information - The Contractor shall satisfy himself as to the quality and nature of the materials which are required to be moved and other work to be performed, and shall notify the Owner of any differences between site conditions shown on the drawings and actual conditions prior to commencement of work. Due to erosion, import fill material may be required.

PART 2.0 - PRODUCTS

- 2.01 Permeable Material - Permeable material used for subdrains shall be Class 2 Permeable Material as specified on the plans. Permeable Material shall conform to Section 68-1.025 of the Caltrans Standard Specifications.
- 2.02 Pipe - Pipe used in the wall drain shall be 4-inch, perforated, SDR 35 pipe. All subsurface discharge pipe shall be 4-inch, non-perforated, SDR 35 pipe. The rough dimensions and lengths of the perforated and non-perforated drain pipe are shown on the drawings.
- 2.03 Fill Material - Soil and rock materials obtained from on-site excavations or imported material may be used as fill provided it meets the following criteria.

<u>Size</u>	<u>Percent Finer</u>
6 inch	100
4 inch	90 - 100
No. 200	10 - 60
Plasticity Index:	25 percent maximum
Organic Content:	Less than 5 percent

PART 3.0 - EXECUTION

- 3.01 Permeable Material Backfill -The void area behind the new retaining wall shall be backfilled with Caltrans Class 2 Permeable Material. The height of permeable material backfill shall be a minimum of at least 2/3 the wall height and a maximum height of 6 inches below the top of the wall. The width of the permeable material shall extend a minimum distance of eight (8) inches from the back of the new retaining wall. The permeable material shall be compacted to 90 percent relative compaction (R.C.) in accordance with ASTM test method D-1557.

- 3.02 Drain Pipe - Perforated drain pipe, if required on the plans, shall be placed as shown on the plans. Pipe shall have perforations facing downward and the pipe shall be the diameter and the type shown on the plans. Clean-outs shall be provided as shown on the plans.
- 3.03 Retaining Wall Backfill - Compacted fill shall be placed behind the retaining wall to meet the grades shown on the plans. Any required fill material shall consist of on-site soil and rock or imported material which meets the criteria for presented in Section 2.03.
- A. Placement and Conditioning - All fill material shall be placed in horizontal layers eight inches or less in loose thickness, conditioned by watering or drying and mixing as needed to a moisture content near the optimum moisture content. Where so designated, the moisture content before compaction shall be within the specified range.
- B. Compaction - Fill material shall be compacted with a sheeps foot roller or other approved equipment to achieve at least 90 percent compaction. In areas so designated, fill shall be compacted to 95 percent.
- C. Recompaction - Field density tests will be performed by the Engineer to determine the degree of compaction obtained. The Contractor shall be responsible for placing and compacting approved fill material in accordance with the specifications. Where compaction is less than the required relative compaction, the Contractor shall increase his compactive effort, remove and replace the fill material, adjust moisture content or make any other adjustments necessary to achieve a satisfactory compaction.
- D. Weather Limits - No fill shall be compacted during periods of rain nor on ground which is not drained of free water. Soil which has been stockpiled and wetted by rain or any other means, shall not be compacted until completely drained and the moisture content is within limits required by the Engineer.
- E. Fill Thickness and Slope - The compacted fill placed on top of the permeable material backfill shall have a minimum thickness of 6 inches. The slope of the finished grade for the backfill behind the retaining wall shall be at a maximum 2:1 inclination, unless otherwise directed by the Engineer.
- F. Limit of Retaining Wall Backfill - The approximate limit of backfill is shown on the plan. The actual limit may vary to suit field conditions. The backfill shall be placed up to a height of a few inches below the top of wall. The lateral extent of the backfill will be the catch point of the 2:1 backfill slope with the existing topography.

END OF SECTION

SECTION 2513  
ASPHALTIC CONCRETE PAVING

PART 1.0 – GENERAL

1.01 SCOPE OF WORK

Description - The work consists of removal of existing street section, preparation of subgrade, placement and compaction of aggregate subbase, Aggregate Base and Asphalt Concrete conforming to Caltrans Standard Specifications.

1.02 QUALITY ASSURANCE

- A. Notification - No site work shall be performed without notification of the Geotechnical Engineer at least 2 full working days prior to commencement of work.
- B. Site Information - The Contractor shall satisfy himself as to the nature and quantity of materials to be moved and other work to be performed, and any differences between site conditions shown on the drawings and actual conditions immediately prior to commencement of work.
- C. Test Method - Relative Compaction will be determined in general accordance with ASTM Test Methods D1557, and D2167, D2922, or D3017.

PART 2.0 – PRODUCTS

- 2.01 Aggregate Subbase shall be as designated on the Plans as Class 2 (R=50) or Class 3 (R=40) aggregate subbase, conforming to Caltrans Section 25.
- 2.02 Aggregate Base shall be Class 2 (R=78) conforming to Caltrans Section 26.
- 2.03 Asphalt Concrete shall conform to Caltrans Sections 39 and 92 with ½-inch Type A Maximum, Medium PG 64-16 as specified in Caltrans Standard Specifications.
- 2.04 Seal Coat shall be a combination of sand and emulsified asphalt conforming to Caltrans Standard Specifications.

PART 3.0 – EXECUTION

- 3.01 Backfill - All void areas behind walls, all utility trenches and other excavations shall be satisfactorily backfilled and compacted to at least 90 percent relative compaction.
- 3.02 Curbs - All adjoining curbs and gutters shall be installed prior to preparing subgrade for pavement constructions.
- 3.03 Subgrade - Subgrade shall be prepared by compacting the upper 6 inches of soil to achieve 95 percent relative compaction and to produce a smooth, uniform, non yielding surface.
- 3.04 Engineering Fabric - Where required, and unless otherwise required, engineering fabric



shall be placed directly over the soil subgrade. The material shall be placed length ways parallel to the direction of traffic. The initial end shall be anchored by Aggregate Subbase or base, and the material stretched taut and free from wrinkles or slackness.

- 3.05 Aggregate Material - Aggregate Subbase and Aggregate Base shall be placed as separate layers and each layer compacted to at least 95 percent relative compaction. Maximum loose layer thickness shall be 8 inches.
- 3.06 Surfacing - Asphalt Concrete surfacing shall be spread and compacted as specified in Section 39 of the Caltrans Standard Specifications.
- 3.07 Seal – Where shown on the plans a sand seal coat shall be applied to the surface of all asphalt concrete as specified in Caltrans Standard Specifications.

END OF SECTION

SECTION 2578  
ASPHALT CONCRETE PAVEMENT OVERLAY

PART 1.0 - GENERAL

1.01 SCOPE OF WORK

- A. Description - The work shall consist of surface preparation of existing pavement, tack coat, placement, compaction of asphalt concrete, applying seal coats, and all other incidental work involved in overlaying existing pavement and construction of a 6 inch asphalt concrete curb as shown on the drawings. All work shall conform to Section 39, 92, and 94 of the Caltrans Standard Specifications and Section 37 of the Marin County Standard Specifications.
- B. Site Information - The Contractor shall satisfy himself as to the quality and nature of the materials which are required to be moved and other work to be performed, and shall notify the Owner of any differences between site conditions shown on the drawings and actual conditions prior to commencement of work.

PART 2.0 - PRODUCTS

- 2.01 Asphalt Concrete shall be Type A Asphalt Concrete conforming to Sections 39 and 92 of the Caltrans Standard Specifications with  $\frac{3}{4}$  inch maximum aggregate in any lower lift of asphalt and  $\frac{1}{2}$  inch maximum aggregate in the upper 2  $\frac{1}{2}$  inches.
- 2.02 Tack Coat shall be an asphalt emulsion conforming to Section 94 of the Caltrans Standard Specifications.
- 2.03 Seal Coat shall be a combination of sand and emulsified asphalt conforming to Section 37 of the Caltrans Standard Specifications.

PART 3.0 - EXECUTION

- 3.01 Surface Preparation - The existing pavement surface shall be cleaned to remove all temporary asphalt (cold patch), loose particles, dirt and extraneous material immediately before applying the tack coat. The Contractor shall grind the existing asphalt surface at the limits of the asphalt overlay to provide a smooth level transition between the asphalt overlay and the existing asphalt surface.
- 3.02 Tack Coat - The existing pavement surface shall be treated with a tack coat of SS-1, SS-1H, CSS-1, or CSS-1H emulsified asphalt, conforming to Section 92 and 94 of the Caltrans Standard Specifications.
- 3.03 Surfacing - Asphalt concrete surfacing shall be spread and compacted as specified in Section 37 of the Marin County Standard Specifications. Asphalt concrete shall be graded in such a manner as to drain toward the inside edge of the roadway as shown on the drawings.

- 3.04 Seal Coat - A seal coat consisting of an emulsified asphalt and water mixture shall be applied to the surface of all asphalt concrete as specified in Section 37 of the Marin County Standard Specifications.
- 3.05 Curb - A 6 inch asphalt concrete curb, matching the existing curb type, shall be constructed on the outboard edge of roadway to the limits shown on the drawings. The new curb shall connect with the existing curb.

END OF SECTION

SECTION 3315  
CAST-IN-PLACE REINFORCED CONCRETE

PART 1.0 – GENERAL

1.01 SCOPE OF WORK

Work Included - The work in this section shall include all materials, equipment, and labor necessary to construct the reinforced concrete structure as shown on the plans.

1.02 QUALITY ASSURANCE

- A. Conformance of Materials - All materials used in the construction of the reinforced concrete structure shall conform to the most recent version and relevant standards of the American Society for Testing and Materials (ASTM), American Concrete Institute (ACI), International Association of Foundation Drilling (ADSC), Caltrans Standard Specifications (Caltrans), or other standards specified by the Engineer.
- B. Submittals - The Contractor shall submit information regarding the mix design and compressive strength of the concrete to be used in the construction.
- C. Inspection and Testing - The Contractor shall provide the Engineer with access to the work and all reasonable facilities for inspecting and checking the work.

For concrete specified to possess minimum 28-day compressive strength ( $f'_c$ ) of 4,000 psi, the following tests shall be made by a recognized testing laboratory selected by the Owner and approved by the Engineer. All tests shall be in accordance with the previously mentioned standards.

- a. Compressive Strength: The Engineer shall make and cure samples in accordance with ASTM C-31. Test in accordance with ASTM C-39. A record shall be made of time and of locations of concrete from which samples were taken.

Four identical cylinders shall be taken from each pour of 50 cubic yards or 2000 square feet or part thereof, being placed each day. One cylinder shall be tested at age 7 days and three cylinders shall be tested at age 28 days, unless otherwise specified.

- b. Concrete consistency (slump) shall be tested in accordance with ASTM C143.

PART 2.0 – PRODUCTS

- 2.01 Concrete - The concrete must have a quality of workability suitable for uniform and proper placement, and when cured must have the required strength and durability. The concrete shall have a minimum 28-day compressive strength ( $f'_c$ ) of 4,000 psi, unless otherwise specified by the Engineer. The concrete shall comply with requirements and specifications set forth in Section 90 of the State Specifications. The maximum aggregate size shall be 1 inch. All concrete shall contain a minimum of 470 pounds (five

sacks) of portland cement per cubic yard.

- 2.02 Steel Reinforcing Bars & Ties - All reinforcing bars and ties shall conform with ASTM A615 Grade 60. The length and size of the steel bars and ties shall be as shown on the plans.
- 2.03 Substitute Material - The Contractor may not substitute material unless a full description and specifications for such material have been submitted to the Engineer in sufficient time (but no less than 48 hours) to allow for review and approval or disapproval prior to intended use.

### PART 3.0 – EXECUTION

- 3.01 Excavation – Grade beam shall be excavated in accordance with the dimensions shown on the Drawings. The excavation shall be into firm, unyielding subsurface soils and be free of loose soil or rock. The Engineer shall inspect the excavation prior to placement of reinforcing steel and concrete.
- 3.02 Reinforcing - The steel reinforcing shall be sized, formed and placed as shown on the plans. The minimum concrete cover is shown on the Drawings and shall be maintained for all steel reinforcement. All reinforcement shall be cold bent. At the time concrete is placed all reinforcing shall be free of mud, rust, oil or any other material that will decrease the bond between the steel and concrete.
- 3.03 Forms, Conveying and Placing Concrete - The concrete shall be conveyed and placed in accordance with Caltrans Section 51 and 90.
- 3.04 Consolidation - All concrete shall be consolidated by internal vibration with the aid of mechanical vibrating equipment operated by experienced and competent workmen. Concrete shall be compacted thoroughly by vibrating to produce a dense, homogeneous mass without voids or pockets. Vibrators shall be placed in the concrete vertically. Thoroughly blend adjacent deposits and layers. After top out leveling of all placements the concrete shall be allowed to set 10 to 15 minutes then shall be given a final vibration, drawing the head out slowly to remove entrapped air. Use of vibrators to transport concrete within forms is not permitted. Keep spare vibrator at the Project Site during all concrete placing operations.

END OF SECTION