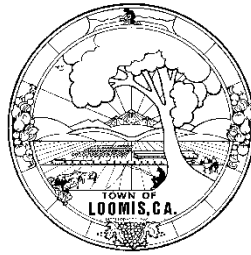


TOWN OF LOOMIS
PLACER COUNTY, CALIFORNIA



REQUEST FOR PROPOSALS
for
Tree Maintenance Services

January 2022

Contact:

Merrill Buck, Town Engineer
townengineer@loomis.ca.gov
(916) 824-1518

Deliver to:

Carol Parker, Deputy Town Clerk
3665 Taylor Road
Loomis, CA 95650

PROPOSALS DUE: Friday, January 21, 2022, by 4:00pm

Request for Proposals
for
Tree Maintenance Services

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NOTICE INVITING PROPOSALS

Town of Loomis
Tree Maintenance Services

INSTRUCTION FOR SUBMITTING PROPOSALS

The Town of Loomis is issuing a Request for Proposals (RFP) from qualified Tree Maintenance Contractors to complete the work described herein. The selection process includes consideration of both price and qualifications. Instructions and proposal requirements are described below.

1. **Qualifications:** Contractor shall possess a valid California Class C-61/D49–Tree Service Contractor’s License and a Town Business License at the time of contract award.
2. **Project Location:** Arterial and collector streets in the Town of Loomis
3. **Project Description:** Work includes tree pruning along road frontages for horizontal and vertical vehicle clearance. Minor additional work includes some tree removal, stump grinding and an allowance for emergency call out work. It is anticipated that a time and materials contract in the amount of \$100,000 will be issued to the successful contractor.
4. **Proposal Package:** Proposal information is available free of charge from the Town’s website under the “RFP, Bids, Notices” webpage. <https://loomis.ca.gov/bids-and-rfps/>
5. **Proposals Due:** 4:00 p.m., Friday, January 21, 2022
Location: Town of Loomis, Town Hall, 3665 Taylor Road, Loomis, CA 95650
6. **Security:** A bid bond is not required with the submission of a proposal, however, by submitting a proposal contractors agree to the conditions described herein, and if selected, will return a signed copy of the Town’s Standard Construction Contract along with the required bonds and insurance.
7. **Proposal Questions To:** Merrill Buck, Town Engineer
Phone: (916) 824-1518
Email: townengineer@loomis.ca.gov
8. **Prevailing Wage:** As a “Public Works” project and pursuant to Section 1773 of the Labor Code, the general prevailing wage rates for Placer County shall apply to this contract as determined by the Director of the California Department of Industrial Relations.
9. **Reply Format:** See the Proposal Requirements Section of the RFP for a description of content and material to be provided.
10. **Award:** A contract will be recommended for award following the review and ranking of proposals received, based upon criteria described in the RFP. The Town reserves the right to reject any and all proposals, or to waive any errors, discrepancies or irregularities.
11. **Firm Prices:** All pricing provided in the proposal will be held firm for a minimum of sixty (60) calendar days following the due date for submitting proposals.

REQUEST FOR PROPOSALS INSTRUCTIONS **Tree Maintenance Services**

INTRODUCTION

The Town of Loomis has a backlog of tree pruning needs along its arterial and collector streets and seeks to hire a professional tree pruning company to prune trees, mostly for horizontal and vertical vehicle clearance. The maintenance work envisioned primarily includes tree trimming work, with some tree removals, stump grindings and an allowance for emergency call out work to augment Town crews in mitigating any immediate threats to public safety resulting from an accident, weather damage, structural failure, etc. An allowance is also provided for arborist consultation services, should a tree assessment be needed by the Town. The selection process outlined in this RFP includes consideration of both price and qualifications.

SCOPE OF SERVICES

Tree Maintenance Services are being requested to complete the work scope described in the Technical Provisions section, included as Attachment 1 to this RFP. Work will also need to be completed in conformance with the Town's General Provisions, included as Attachment 2 to this RFP.

FORM OF AGREEMENT

A copy of the Town's standard Construction Contract ("Agreement") and Contract Forms is provided as Attachment 3 to this RFP and incorporated herein. By submitting a proposal, the respondent agrees that it will enter into the Agreement and provide the required bonds and insurance along with completion of the Contract Forms, using the attached without exception to the content.

PROPOSAL CONTENT REQUIREMENTS

Proposal Format

Proposals shall be submitted in two sections.

1. Section 1 - Proposal Forms

Contractor shall complete all of the proposal forms that are included in the Proposal Forms Section of this RFP following these instructions. This section includes the Bid Schedule which will be used in considering the cost portion of the proposal.

2. Section 2 – Proposal Narrative

The Proposal Narrative may consist of items and content at the discretion of the Contractor. It is an opportunity for each firm to distinguish its practices and work ethic from its competitors. Suggested items to include in the narrative section of the

proposal include a cover letter, brief description of the Contractor's typical work plan describing how the requested services will be provided including traffic handling, typical tree pruning crew and equipment make-up, qualifications and credentials of key staff members, efficient or novel ways in which the crew and/or equipment may be cost effective, any proposed modifications to the effort outlined in the Bid Schedule to better match the stock equipment or practices used, or any other discretionary materials that may improve the quality of the proposal.

DELIVERY OF PROPOSALS

Proposals must be received (not just postmarked) by the Town Clerk at Town Hall, by or before the due date and time indicated on the cover page.

Submit three (3) printed copies of the proposal by mail, or hand-deliver to the address listed below. Envelopes should be sealed and labeled with the firm's name and a reference to the project.

Attn: Carol Parker, Deputy Town Clerk
Town of Loomis, 3665 Taylor Road, Loomis, CA 95650

SELECTION PROCESS AND EVALUATION CRITERIA

Submittals received by the specified deadline will be reviewed and ranked by a selection committee consisting of Town staff or others designated by the Town.

Contractor selection will be determined using a "best value" methodology which includes the consideration of both cost and qualifications. Point will be assigned to each proposal weighted with 150 possible points for cost and 50 possible points for qualifications for a total of 200 points.

Cost

The Cost portion of the proposal will be evaluated based upon the Total Bid Amount as stated on the Contractor's completed Bid Schedule page in the Proposal Forms. The lowest cost shall receive the maximum score of 150 points. A percentage for other proposers will then be calculated representing the percentage that their cost exceeds the lowest proposal. This percentage, when multiplied by 150 points shall serve as the amount to deduct from 150 points maximum cost component of their score.

As an example, say the second lowest proposal was \$105,000 compared to the lowest proposal of \$100,000. The difference of \$5,000 would be divided into the lowest proposal's price of \$100,000 yielding 5%. This 5% would be multiplied by the 150 possible points, resulting in a 7.5 point deduction. When subtracted from the 150 points possible, this would give a score for the second lowest proposal of 142.5 points.

Qualifications

The Narrative portion of the proposal along with the Bidder's Qualifications and Bidder's References portion of the Proposal Forms will be used to score the qualifications

component of each proposal for a maximum of 50 points. These points will be broken down as follows:

1. Contractor provided Narrative (25 points)
2. Feedback from past performance references for similar work (10 points)
3. Employee Certifications and Licenses (5 points)
4. Years in Business, Suitability of Equipment, Safety Record (5 points)
5. Proximity/Proposed Maximum Response Time (5 points)

The Contractor provided Narrative portion of the proposal will be evaluated based upon the following criteria:

- Project understanding
- Overall comprehensiveness of the response to the RFP
- Work plan and approach to managing costs and schedule
- Work practices and professionalism

Should the total scores be close, at the discretion of the Town, those firms deemed most qualified may be further evaluated through interviews conducted as part of the final selection process. An additional 1-10 points may be added to each proposal's score following the interviews, based upon the respondent's demonstrated ability to provide services meeting the Town's needs.

After reviewing all proposals, and completing interviews if necessary, the Town will select the Contractor that best serves the Town's interest and make its award recommendation before the Town Council, which reserves the right to reject any or all proposals.

SCHEDULE

The following estimated schedule has been established for the project.

<u>Task</u>	<u>Approximate Dates</u>
Release Request for Proposals	January 7, 2021
Deadline to Submit Questions	January 17, 2022, by 5:00 pm
Issuance of Clarifications (if needed)	January 18, 2022
Proposal Due	January 21, 2022, by 4:00pm
Contractor Selection (w/ interviews if needed)	Jan. 24 – Jan 28, 2022
Award Contract	February 8, 2022
Start Work	March 2022

CONTRACT DURATION AND POSSIBLE EXTENSION

The Contract for Tree Maintenance will be for an initial contract period of one year for a value not to exceed \$100,000. By mutual agreement and at the discretion of the Town, the contract may be extended by the Town for up to three (3) additional years beyond the initial contract period, in one (1) year increments.

DISCLAIMERS

Upon receipt, each Proposal becomes the sole property of the Town and will not be returned to the respondent. Each respondent is solely responsible for the costs it incurs to prepare and submit its proposal.

The Town reserves, in its sole discretion, the right to reject any and all proposals that are determined to contain false, misleading or materially incomplete information, the right to cancel or postpone the RFP or the project at any time, or to decline to award a Contract to any of the respondents.

The Town reserves the right to negotiate specific requirements and costs using the selected proposal as a basis, and to waive any irregularities in choosing the firm which, in the Town's opinion, best serves the Town's interests.

All proposals, and material contained therein, shall be considered public documents and as such are subject to inspection under the Public Records Act following the completion of the proposal selection process and award of contract.

PROTESTS

Any protest challenging the Town's selection, or the selection process, must be submitted within five business days following the Town's issuance of the Notice of Selection. The protest must be submitted in writing via email to Carol Parker, Town Clerk, cparker@loomis.ca.org and must clearly specify the basis for the protest. The protest will be reviewed by the Town Manager in consultation with the Town Attorney, and their determination on the protest shall be final. No public hearing will be held on the protest. Time being of the essence, the Town reserves the right to proceed with the award of the Construction Contract and commencement of services notwithstanding any pending protest or legal challenge.

QUESTIONS

For questions regarding this RFP, contact Merrill Buck, Town Engineer at townengineer@loomis.ca.gov, (916) 824-1518.

AVAILABLE DOCUMENTS

This Request for Proposal, supporting attachments and any updates, clarifications or addendum that may be issued are available for download from the Town's webpage at: <https://loomis.ca.gov/bids-and-rfps/>

A “plan holders list” is not being maintained so it is the responsibility of the Contractor to review the Town’s website or contact the Town’s representative to determine the existence of any addenda.

Documents available on the Town’s webpage as supplemental information to this Request for Proposals include:

- Attachment 1 – Technical Provisions
- Attachment 2 – General Conditions
- Attachment 3 – Contract and Contract Forms
- Attachment 4 – Location Exhibit

Tree Maintenance Services

BID PROPOSAL

Bid To: Town of Loomis
3665 Taylor Road
Loomis, CA 95650

Bid From:
Bidder's Company Name: _____
Contact Person: _____
Business Street Address: _____
Town, State, Zip Code: _____
Phone No.: (_____) _____
E-mail: _____
Contractor's License Class: _____ No.: _____
Contractor's License Expiration Date: _____
DIR Registration Number: _____

I, as bidder, declare that I have satisfied myself as to the actual conditions and requirements of the proposed work by careful examination of the location and by examination of the contract documents. The failure or omission to examine any location, equipment, form, instrument or document shall in no way relieve the bidder from any obligation in respect to this bid.

I hereby certify that this bid is genuine and I have not in any manner sought by collusion to secure for myself an advantage over any other bidder.

I agree that if this proposal is accepted, I will contract with the Town of Loomis in the form of the agreement proposed, will provide all bonds and insurance certificates as required under the agreement and will furnish all equipment, materials and perform all labor required to complete the work in accordance with the contract documents for the prices set forth in the Bid Schedule.

I have carefully checked all of the calculations in the Bid Schedule and understand that the Town shall not be responsible for any errors or omissions on my part in making up this bid.

I agree that this bid may not be withdrawn for a period of sixty (60) calendar days from the date of the bid opening and that the Town reserves the right to reject any or all bids or waive any irregularity or informality in the bids received.

BID SCHEDULE

Hourly rates are to be submitted for all items in the Bid Schedule below. Quantities are estimated and may not reflect the crew staffing ratios or equipment assumptions ultimately employed by the contractor. Payment will be made for actual services and equipment provided. The Total Bid Amount will be used to rank the difference in cost between bidders.

Item No.	Item Description	Estimated Quantity	Unit	Unit Price (Cost/Hour)	Item Total
-----------------	-------------------------	---------------------------	-------------	-------------------------------	-------------------

LABOR: SCHEDULED WORK – STRAIGHT TIME

1	Tree Service Foreman	600	Hour	\$	\$
2	Tree Service Laborer	1200	Hour	\$	\$
3	Traffic Control Laborer/Flagger	800	Hour	\$	\$
4	Tree Consultation with Arborist	20	Hour	\$	\$

Assumptions:

Crew will typically consist of five people – (1) Tree Service Foreman, (2) Tree Service Laborers and (2) Traffic Control Laborers as Flaggers. Contract requires that at least one person on the crew be a certified arborist. Time is billed as the amount of time on the job site. Travel time is NOT included.

LABOR: UNSCHEDULED EMERGENCY CALL OUT WORK – STRAIGHT TIME

5	Tree Service Foreman	8	Hour	\$	\$
6	Tree Service Laborer	16	Hour	\$	\$

Assumptions:

Emergency work includes (2) Tree Service Laborers, a bucket truck and a chipper. Town will pay for a maximum of one (1) hour travel time, in each direction, for emergency work.

EQUIPMENT: ALL WORK

7	Chipper with Chip Truck	600	Hour	\$	\$
8	Bucket Truck	600	Hour	\$	\$
9	Crew Truck (pickup)	200	Hour	\$	\$
10	Stump Grinder	20	Hour	\$	\$
11	Crane Truck	8	Hour	\$	\$

Assumptions:

Prices above shall include fuel, oil, lubrication, supplies, necessary attachments, repairs, maintenance, depreciation, storage, dump fees and all incidentals including the cost of small tools such as chain saws. Equipment used for which an hourly rate is not stated in the table above will be paid in accordance with the current Caltrans Equipment Rental Rate Book along with a 15% markup.

Total Bid Amount: \$ _____

DESIGNATION OF SUBCONTRACTORS

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor’s own employees and equipment.

In accordance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 *et seq.* (the “Subcontracting Act”), the Bidder hereby certifies and submits, as required by law, the following concerning subcontractors:

1. The portion of the work, which will be done by each such subcontractor; and
2. The name, address and license number of each subcontractor who will perform work or labor, fabricate a portion of the work or improvement according to detailed drawings in the project plans, or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (0.5%) of the Contractor’s total bid.

<u>Portion of Work to be Performed by Subcontractor</u>	<u>Subcontractor Name, Address and License Number</u> <small>(Subcontractor’s License No. Required under AB 44)</small>	<u>Registered with DIR?</u> <small>✓ check if yes</small>
1.		
2.		
3.		
4.		
5.		
6.		

(For additional Subcontractors, attach copies of this sheet as necessary)

✓ **DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION REQUIREMENT**

In accordance with Labor Code Section 1725.5, all contractors and subcontractors listed on a public works bid proposal must be registered with the DIR.

STATEMENTS, QUESTIONNAIRE AND NON-COLLUSION AFFIDAVIT

The following Statements, Questionnaire and Non-Collusion Affidavit are being made a part of this Proposal. By signing the signature portion of the Proposal, the contractor certifies that under penalty of perjury, the responses are true. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder

Has ___ Has Not ___ **(Bidder to check one)**

been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with public Contract Code Section 10162, the bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes ___ No ___ **(Bidder to check one)**

If the answer is yes, explain the circumstances in the space below:

PUBLIC CONTRACT SECTION 10232 STATEMENT

In accordance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final un-appealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

EQUAL OPPORTUNITY EMPLOYER STATEMENT

We participate in the Affirmative Action Program of the Town of Loomis and accept the following operating policy as an equal opportunity employer:

"It is the policy of this company to assure that applicants are employed and that employees are treated during employment without regard to their race, religious creed, color, sex, age, national origin or ancestry. Such action shall include, but not be limited to, employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship, pre-apprenticeship training and on-the-job training."

**PUBLIC CONTRACT CODE SECTION 7106
TITLE 23, UNITED STATE CODE, SECTION 112
NON-COLLUSION AFFIDAVIT**

In accordance with Title 23, United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that 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, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that 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, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

BIDDER'S QUALIFICATIONS

The following statements as to the financial qualifications and experience of the Bidder are submitted as a part of this Bid and the Bidder guarantees the truthfulness and accuracy of the information. Pursuant to Public Contract Code 10165, financial statements and experience questionnaires are not public records and are not open to public inspection.

Financial Data

Reference is hereby made to the following bank or banks as to the financial responsibility of the bidder.

<u>NAME OF BANK</u>	<u>ADDRESS</u>
_____	_____
_____	_____
_____	_____

Experience Data

The Bidder has been engaged in the contracting business, under the present business name for _____ years. Experience in work of a nature similar to that covered in this Bid extends over a period of _____ years.

Response Time

Response time to the Town of Loomis upon notification of a need for an emergency call out is anticipated to be _____ hours. (provide in ¼ hour fractions, such as 1.25 hours)

Bidder's Personnel

The following is a list of key personnel including an listing of the person's knowledge, ability or trade along with a brief description of their experience. If Bidder is awarded the Contract, it is understood that the work will be directed and actively supervised by one of these persons.

<u>List of Personnel</u>	<u>Job Title</u>	<u>Skills/Certifications</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

BIDDER'S REFERENCE

List at least three (3) major projects which the Bidder has performed comparable work within the last two (2) years. Provide a contact person and description of the project, or other such information that will demonstrate the ability to vigorously prosecute the work. Attachments containing the information requested below may also be provided, in lieu of using this form.

1.

PROJECT NAME	LOCATION	YEAR COMPLETED
AGENCY CONTACT PERSON	TELEPHONE NO.	FINAL CONSTRUCTION COST
BRIEF DESCRIPTION OF THE WORK AND/OR MANNER OF EXECUTION		

2.

PROJECT NAME	LOCATION	YEAR COMPLETED
AGENCY CONTACT PERSON	TELEPHONE NO.	FINAL CONSTRUCTION COST
BRIEF DESCRIPTION OF THE WORK AND/OR MANNER OF EXECUTION		

3.

PROJECT NAME	LOCATION	YEAR COMPLETED
AGENCY CONTACT PERSON	TELEPHONE NO.	FINAL CONSTRUCTION COST
BRIEF DESCRIPTION OF THE WORK AND/OR MANNER OF EXECUTION		

SIGNATURE PAGES

The terms and conditions of the final Construction Agreement, when executed, shall control and supersede anything herein to the contrary or inconsistent with such contract.

The bidder states that he has reviewed the proposed work in order to satisfy himself, by personal examination, or by such other means as he prefers, of the location of the proposed work and as to the actual conditions of the work site. The bidder hereby offers to furnish all labor, materials, equipment, transportation, and services necessary to complete the work on this project in accordance with the Contract Documents and to complete all requirements of the Contract Documents for the sums quoted in this Bid.

Addenda:

(if any) bidder has received and examined all addenda issued during the bid period and agrees that all addenda shall be made a part of the Contract Documents. The bidder acknowledges receipt and incorporation of all impacts resulting from all addenda issued by inserting the number of each addendum below OR by signing and submitting with the bid proposal the signature page from each addendum.

Addendum Nos. _____, _____, _____,

Bidder's Guarantee: (Not Required with Proposal)

~~In accordance with Public Contract Code Section 20170, accompanying this Bid is _____ (insert the word "Cash", "Cashier's Check", "Certified Check" or "Bidder's Bond" as the case may be) made payable to the Town of Loomis in the amount of _____ (\$ _____) equal to at least ten percent (10%) of the total amount of this bid. This amount is given as a guarantee that, in case the undersigned defaults in executing a contract and/or furnishing the necessary bonds after contract award, the said guarantee and the money payable thereon shall become and remain the property of the Town as liquidated damages.~~

Company Profile:

The names of all persons interested in the foregoing bid as principals are as follows:
(Note: If the bidder is a corporation, state the legal name of the corporation and the names of the president, secretary, treasurer and manager thereof. If the bidder is a partnership, state the true name of the firm and the names of all individual partners composing the firm. If the bidder is an individual, state the first and last name in full).

Firm Name: _____

Business Address: _____

Names and Titles of Company Officers:

1. _____
2. _____
3. _____
4. _____

Statements, Questionnaire and Non-Collusion Affidavit:

The Statements, Questionnaire and Non-Collusion Affidavit included in this proposal are to be made a part of the Proposal. By signing the signature portion below, the contractor certifies that under penalty of perjury, the responses are true. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Proposal Execution:

IN WITNESS WHEREOF, the undersigned, as bidder, represent and warrant that they have the right, power, legal capacity and authority to enter into and execute this document on behalf of the Bidder, and have executed this document by setting hereto their names, titles, and signatures. The representations made herein, including but not limited to the above contractor's license, expiration date and name of bidder, are true and correct, shall be complied with and are made under penalty of perjury.

IF SOLE OWNER, sign here:

I sign as sole owner of the business named above: _____

Social Security Number: _____

Employer Identification Number: _____

IF PARTNERSHIP, sign here:

The undersigned certify that we are partners in the business named above and that we sign this proposal with full authority to do so. (one or more partners sign)

By _____ (Title) _____

By _____ (Title) _____

Federal Tax Identification No. (FEIN): _____

State Tax Identification No.: _____

IF CORPORATION, execute here:

The undersigned certify that they sign this proposal with full and proper authorization to do so.

Corporate name _____

By _____ (Title) _____

By _____ (Title) _____

Incorporated under the laws of the State of _____

Federal Tax Identification No. (EIN): _____

State Tax Identification No.: _____

Tree Maintenance Services

TECHNICAL PROVISIONS

TECHNICAL SPECIFICATIONS

These Technical Specifications define the standards under which the work is to be performed and shall take precedence over requirements stated in the Caltrans Standard Plans and Standard Specifications. All costs associated with satisfying the requirements in these Technical Specifications shall be included in the Contractor's bid unit prices and no additional compensation shall be made.

PART 1 - GENERAL

1.01 WORK INCLUDED

Work primarily includes tree maintenance activities with a focus on pruning for horizontal and vertical clearance with additional work that may include tree removal, stump grinding and emergency response. The total amount of work for these activities is to be paid at the unit prices and hourly rates stated on the bid schedule up to a maximum, not to exceed contract amount of \$100,000.

The Contractor shall employ a workload management system that is capable of completing tasks efficiently and effectively and does not require constant supervision by the Town. Daily logs reporting work completed along with crew and equipment hours shall be provided weekly to the Town to facilitate the tracking of work against the budget. Invoices shall be prepared and submitted monthly.

The Town reserves the right to increase or decrease the quantities of work included in the Bid Schedule or to delete an entire bid item from the bid schedule, either before execution of the agreement or during the agreement term.

During the agreement term, the Town may request that the Contractor perform work not listed in the Bid Schedule such as pesticide application or tree planting services. To the extent that hourly rates can be used for this work, compensation shall be provided at the hourly rates stated in the Bid Schedule. The cost of material, not part of the bid schedule shall be negotiated and paid under a written change order.

1.02 LOCATION

All tree maintenance work is within the Town of Loomis, located in the public right of way or on Town owned land such as parks or facility properties. A street corridor map identifying where work is to be completed is provided as an attachment to these specifications.

1.03 SEQUENCING AND ORDER OF WORK

The Town shall have the ability to prioritize the order in which work gets completed and will discuss desired sequencing prior to the start of construction.

1.04 TIME OF COMPLETION AND LIQUIDATED DAMAGES

Services will cover a one-year period and are anticipated to begin in March 2022. At the Town's discretion, and by mutual agreement with the Contractor, this agreement may be extended over three additional one-year periods with the same contract terms and conditions.

The Contractor is not authorized to perform any work until after receiving notification from the Town to do so. Once a request for tree maintenance services is made, it is expected that services will commence within 1-week and continue until completed. As a maintenance contract, liquidated damages have not been made a part of the contract.

1.05 HOURS OF OPERATION

Regular working days shall be Monday through Friday except Town legal holidays. Given that work will occur on arterial and collector streets, there is a desire to not impact peak-hour traffic. Normal working hours shall therefore be from 8:00 a.m. to 5:00 p.m. Emergency responses are exempt from this requirement. Any exceptions to these restrictions shall require prior approval from the Town Representative.

1.06 LICENSES

The Contractor and all of their subcontractors shall hold current licenses for the craft that they are contracting for, as required by State and Local laws. The Licenses must be in good standing for the previous five (5) consecutive years without any official unresolved record of complaints registered or filed with the Board or California Department of Consumer Affairs.

The Contractor and all Subcontractors shall obtain a Town business license, the cost of which shall be included in their bid unit prices.

1.07 SANITATION FACILITIES, WATER AND POWER

The Contractor shall be responsible for providing sanitation facilities for their crew and subcontractors.

1.08 STAGING / CONSTRUCTION AREA

Material and equipment staging shall be limited to areas within the public right-of-way that can be safely utilized without unreasonable impact to the traveling public. All work areas shall be restored and available to the public at the end of each work-day.

1.09 MEETINGS

Pre-Construction Conference: A pre-construction conference will be scheduled at the Loomis Corporation Yard, 3165 Rippey Road, Loomis, CA 95650 around the time of the contract's execution. The conference will address administrative items, the Contractor's proposed work and traffic control plan, and other construction related

matters. At, or before the pre-construction conference, the Contractor shall provide the following items:

- The proposed schedule or sequencing of the work (grouping work that requires flagger-controlled reversible lanes)
- Typical work area and lane closure traffic control plans
- Contact information, including after-hours and emergency staff contact names and phone numbers.

The meeting shall be attended by the Contractor's project manager and field superintendent along with the Town's project manager and inspector.

Periodic Construction Meetings: While weekly construction progress meetings are not anticipated, additional meetings may be scheduled and held at a date and time mutually satisfactory to the Contractor and the Town's Representative.

1.10 SAFETY

The Contractor shall designate an on-site safety officer as one of the crew, to be present during construction and during the handling of materials, equipment, or waste. The on-site safety officer will ensure compliance with the Contractor's health and safety plan and Occupational Safety and Health Administration (OSHA) requirements.

1.11 RELEASE OF RETENTION

As a maintenance project, retention will **not** be held on this project.

1.12 WITHHOLDING PAYMENT

The Town may withhold payment to such extent as may be necessary to protect the Town from loss due to one or more of the following reasons:

- Defective, unsatisfactory or inadequate work not corrected.
- Claims filed or reasonable evidence indicating probable filing of claims.
- Failure of the Contractor to make proper payments to subcontractors or for materials or labor.
- Unrepaired property damage resulting from an incident.

1.13 STANDARDS

Tree pruning and tree removal services shall be performed in accordance with the most current editions of the following benchmark standards:

1. American National Standards Institute (ANSI) A300 Pruning Standards
2. ANSI Z133.1 Safety Standards
3. The most recent ISA Best Management Practices: Tree Pruning

1.14 CERTIFICATIONS AND EXPERIENCE

The Contractor and the Contractor's crews shall be subject to the following minimum requirements, skills and standards.

- Contractor's equipment, work procedures, and training practices shall comply with ANSI Z133.1 Safety Standards.
- Contractor shall provide current OSHA certification of aerial equipment to be used throughout the term of the project.
- Tree climbers shall be Certified Tree Workers or Town approved equivalent with a demonstrated knowledge of industry standard tree care and related operations.
- All tree crew members shall have:
 - Certification in EHAP to be able to work in the proximity of electrical hazards.
 - A track record of high quality performance.
 - The ability to operate equipment in accordance with the manufacturer's recommendation.
 - Current licenses for the operation of equipment utilized.
 - Mechanical ability to make the required operator adjustments to the equipment being used.
 - Knowledge of safety regulations as they relate to tree care and traffic control.
 - American Red Cross Standard First Aid training (a minimum of one member on each crew).

1.15 CERTIFIED ARBORIST

The Contractor shall employ a person certified by the International Society of Arboriculture (ISA) as a "Certified Arborist" throughout the duration of the contract.

The "Certified Arborist" shall be responsible for:

- Day to day coordination of the work crew assignments.
- Providing inspection and on-site supervision of the work crews to ensure that work is performed in accordance with the standards specified in these Technical Specifications.
- To serve as Contractor's representative in routine dealings with the Town, (i.e. crew scheduling, performance standards, time and material expenditures, and the resolution of such situational disputes as may arise between work crews, the Town, and/or the public).

The Certified Arborist may be a regular member of the crew and shall be paid at the Tree Service Forman hourly rate, as stated on the Bid Proposal.

1.16 CHARACTER OF WORKERS

All work shall be completed in a professional manner by skilled craftsman that are regularly engaged in the work to be performed at the Journeyman level or directly supervised by a Journeyman.

The minimum crew shall consist of at least two (2) Tree Service Laborers each having the experience level of a Certified Tree Worker, one (1) Tree Service Forman, accompanied by at least one (1) aerial lift truck (bucket truck), one (1)

dumping chip box, one (1) brush chipper, and all other necessary tools and equipment (i.e. chain saws, climbing lines and saddles, personal safety gear, rigging lines, additional traffic control personnel and traffic control devices, etc.) to perform the required work.

Contractor employees shall wear company uniforms which shall consist of long pants and shirts with the company name on the shirt. When needed, the Contractor's staff will utilize rain gear, rain boots, safety shoes and other high visibility and protective equipment. All contracted employees while on the site shall exhibit a clean, neat professional appearance. Contractor's equipment and vehicles shall also be professional in appearance, exhibit the company name and phone number and be well maintained for safe operation.

1.17 DEFINITIONS

- A. Objective: Pruning for Structure: Pruning to improve structure involves the removal of live branches and stems to influence the orientation, spacing, growth rate, strength of attachment and ultimate size of branches and stems. It is used on young and medium aged trees to help engineer a sustainable trunk and branch arrangement. It is used on large maturing trees to reduce certain defects and space main branches along one dominant trunk. This pruning type can be summed up as "subordinate or remove codominant stems and competing leaders". This practice can limit the failure potential of branch attachments. The maximum diameter of reduction cuts will be specified in consultation with the Town's Representative prior to such work. Structural pruning is the foundation for other pruning types.
- B. Objective: Pruning to Raise: Raising is the selective removal of branches to provide vertical clearance. Crown raising shortens or removes lower branches of a tree to provide clearance for buildings, signs, vehicles, pedestrians and views. The percentage of live crown remaining shall be no less than 66% when raising is completed.
- C. Objective: Pruning to Clean: Cleaning is the removal of dead, critical diseased, detached and broken branches 1/2" or larger. This type of pruning is done to reduce the risk of branch failure. Cleaning removes branches with cracks that may be prone to failure. Crossing or rubbing branches shall be managed by reducing or removing the branch in the pair that is damaged or causing the most damage or conflict in the tree. Care must be used to avoid stripping live branches and removing too much foliage from the interior of the tree crown. This practice which is known as "lion tailing" is unacceptable. The location and diameter of branches to be removed should be discussed with the Town's Representative prior to completing the work.
- D. Objective: Pruning to Reduce: Crown Reduction is the selective removal of branches and stems to decrease the height and/or spread of a tree. This is done to minimize leverage, risk of failure, to reduce height or spread or to clear vegetation from buildings, structures or utilities. Crown reduction shall be accomplished with reduction cuts to a viable lateral stem, not with heading cuts. While reducing the tree crown, tree workers must adhere to basic tree pruning

practices involving limb/branch size relationships and pruning outside branch bark collar to avoid injury to the remaining tree parts and the onset of decay at cut sites.

- E. Objective: Pruning to Restore: Crown Restoration is the selective removal of branches, sprouts and stubs from trees that have been previously topped, severely headed, lion tailed or previously damaged. On broken branches, a heading cut should be used retaining a suitable branch for re-structuring. On branches that were previously headed or severely cut and sprouts are regenerating, the best one to three sprouts shall be selected to remain with consideration of proper spacing to allow for future growth.
- F. Grid Pruning: Grid pruning consists of pruning four (4) or more trees located in close proximity, at the same address or at nearby street addresses. The term is used to reflect an economy of scale when pruning trees in one geographical area, based upon a reduction in travel time between trees.
- G. Work Order Pruning: Work order pruning consists of specific assignments for individual addresses as assigned by the Town. The work orders may be prioritized by the Town to respond to priority needs, geographic layout, or other considerations.
- H. Emergency Response: An emergency response crew shall consist of at least two (2) fully qualified workers capable of performing whatever pruning, branch, limb or tree removal is necessary. The hourly rate paid shall include the two man crew along with a dump truck or aerial lift, brush chipper, chip box, and all other miscellaneous tools and equipment that may be necessary to handle the emergency.

PART 2 – MATERIALS AND EQUIPMENT

2.01 GENERAL

It shall be the responsibility of the Contractor to provide all crew and equipment necessary to perform the work described in a safe, efficient, aesthetically pleasing, and legal manner.

2.02 CERTIFICATIONS

The Contractor shall provide current OSHA certifications of aerial equipment to be used throughout the term of this project.

Cranes and other rigging equipment shall be properly certified, with evidence of such certification available for inspection prior to use. Crane operators shall be certified by the National Commission for the Certification of Crane Operators (NCCCO) and shall display current certification prior to operating the crane. The use of cranes and certified operators shall not result in additional charges to the Town beyond the unit price for the work being performed.

2.03 EQUIPMENT

An aerial lift truck (bucket truck) is required and shall accompany the tree pruning crews every day that work is performed in order to ensure that end branch pruning can be completed properly, when needed. This requirement is not intended to restrict or prohibit tree climbing as a pruning method, however, the Town will insist that a aerial lift truck be mobilized and accompany the tree pruning crews at all times.

Pruning tools shall be sharp, clean and sized appropriately for the pruning cut. Chainsaws shall not be used to remove branches 2" or less in diameter. Avoid the use of any pruning and climbing equipment that may cause damage to bark tissue. Spikes (climbing spurs) shall not be used for climbing trees unless the tree is being removed.

Pruning tools shall be treated with a disinfectant (such as Lysol) when pruning trees infected with a pathogen that may be transmitted (on tools) from one tree to another of the same species, such as diseased Pears (Pyrus spp.). Disinfectants should be used before and after pruning individual trees.

PART 3 – EXECUTION

3.01 HOMEOWNER NOTIFICATION

Then need to notify homeowners of the pruning work is not anticipated given that the work is focused on arterial and collector streets.

3.02 NO PARKING SIGNS

It shall be the Contractor's responsibility to furnish and install Town approved "No Parking" signs when necessary to perform the work. "No Parking" signs shall be posted on barricades or delineators adjacent to individual tree, at least (48) hours prior to the work being performed. Nailing or stapling notices on trees is not permitted. Contractor is responsible for removing all "No Parking" posting promptly after completing the work.

3.03 STORM WATER POLLUTION PREVENTION

Consistent with the requirements of the Clean Water Act, the project is subject to storm water pollution prevention requirements, which include the implementation of a Storm Water Pollution Prevention Plan (SWPPP) and/or implementation of local storm water requirements which prohibit the discharge of pollutants from the project site. Curb inlets shall be protected against the intrusion of debris.

3.04 WORK ZONE

A work zone shall be established and maintained for each tree pruning location. The Contractor shall use all appropriate traffic control devices, as necessary, to establish and maintaining a safe work zone.

No person other than members of the Contractor's work crew may be allowed to enter the work zone. If they do, the Contractor shall immediately cease all work and shut down equipment until the work zone is clear.

3.05 TRAFFIC CONTROL

The contractor shall conduct operations so as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be completed that day. At the end of each work period, all traffic control devices shall be removed from the traveled way, shoulder, sidewalk, and parking lanes.

The full width of the traveled way shall be open for public use on Saturdays, Sundays and designated legal holidays.

The contractor shall submit typical traffic control plans for the Town to review illustrating the means and methods that will be employed in each of the following scenarios:

- Work in the shoulder or parking areas which do not require a lane closure or do not impact the opposite direction of travel (a typical residential work area).
- Half-street closure requiring cars to utilize a flagger-controlled reversible lane.

Traffic control plans shall be in accordance with the California Manual of Uniform Traffic Control Devices (CA-MUTCD) and/or the Caltrans Standard Plans (RSP T11 & T12).

When flagging is necessary, crew members serving as flaggers shall be exclusively dedicated to the task of flagging.

On roads that are four lanes or greater (two in each direction), a minimum of one lane of traffic, not less than 11 ft. wide shall be maintained for each direction of travel and shall remain open for use at all times during the course of the work.

If streets are to be closed and traffic is to be detoured, a "Road Closed – Local Traffic Only" detour plan must be submitted and approved by the Town prior to starting work. Police, Fire, and the Public Works Representative shall be notified at least 24 hours in advance of implementing any detours.

The Contractor shall be responsible for ensuring that the traffic control plan is properly implemented and maintained with delineators, signage and arrow boards (if necessary), at their own expense and shall immediately repair or replace any device in the traffic control system that is damaged, displaced or ceases to function as intended.

3.06 PRUNING

A. General

Pruning shall be appropriate for the species and site conditions and shall primarily:

- Provide vertical and horizontal clearance for vehicles, pedestrians, structures and low voltage utilities.

With concurrence from the Town, pruning may also be completed to:

- Improve branch structure and reduce failure potential
- Improve safety and security for residents and visitors
- Repair failure potential and branch damage from wind loading
- Improve aesthetic characteristics
- Reduce future maintenance costs
- Prevent or mitigate a pest or disease problem

All persons engaged in tree pruning shall be familiar with each of the pruning types defined in the “Definitions” section of these Technical Specifications. Selection of the appropriate pruning type(s) shall be based upon the most recent ISA Best Management Practices: Tree Pruning.

B. Branch Removal

All pruning cuts shall conform to ANSI A300 standards (Part 1: Pruning). Do not make flush cuts or leave branch stubs. Cuts shall be made outside the branch collar in a manner that promotes callous growth to cover wounds.

Not more than 25% of the live foliage or buds shall be removed within an annual growing season. The percentage of foliage removed shall be adjusted according to age, health, and species considerations. Up to 33% live foliage or bud removal may be accepted for *Ulmus parvifolia* (Chinese Elm) or other special species after consultation with the Town’s Representative. Clearance pruning that does not comply with these requirements shall be conducted only after direct approval from the Town’s Representative.

Heading cuts shall not be used when pruning mature trees, except in very limited cases with approval from the Town’s Representative. Whenever possible, use reduction cuts to reduce height and branch removal cuts (thinning cuts) to reduce branch end weights. When reduction and branch removal cuts are not possible (such as when interior lateral branches are not present) and tree hazard potential is high, then heading cuts may be needed, but their use should be minimized.

Pruning to achieve necessary clearances shall be defined as providing the following distances:

Roadway- not less than 16’ from road surfaces

Edge of Roadway – not less than 3-feet from the edge line

Sidewalk- not less than 8’ from sidewalk surfaces

Building- not less than 8’ from vertical building surfaces

Roofs and Street Lights- not less than 10’ from building roof surfaces or street lamps.

Utility and Telecom Drop Lines- not less than 2’ or sufficient clearance to prevent contact and vascular tree growth onto wires.

Limbs one inch (1") in diameter or greater shall be removed with a series of three (compound) cuts. Make the first cut on the underside of the branch not closer than one foot (1') to two feet (2') from the branch junction. The undercut should be at least one-third ($\frac{1}{3}$) of the diameter. Make the second cut one-inch (1") to three inches (3") further from the branch junction than the first. Make the final cut just outside the branch collar in a manner that will stimulate rapid callus growth that will cover the wound.

Removal from a tree of branches three and one-half inches (3.5") in diameter or larger, unless dead, broken or cracked, require prior approval from the Town's Representative, and once cut shall be lowered by proper ropes to the ground. The Contractor shall not drop logs or trunks in a way that creates undue noise, shock impacts or damage.

While loading and handling debris, the Contractor shall maintain control at all times so as not to result in damage to the public rights of way or private property. Any damage caused shall be repaired within five (5) days, at the Contractor's expense and to the satisfaction of the Town's Representative.

C. Unacceptable Pruning Practices

Pollarding or hat-racking is when a tree is severely pruned back to consist of one main trunk and a number of short lateral branch stubs. This type of pruning results in excessive shoot growth the next season. These new branches are typically weak because they develop from adventitious buds and there is no firm connection with the main wood frame of the tree. Pruning procedures that cut back to three inch (or larger) stubs weaken the structure of the tree as well as deter from the appearance of the natural form of the tree.

Roundovers or "shearing" is when branches are cut to present a "sheared" appearance over the total surface of the crown or just on top. This type of pruning places cuts anywhere along a branch (not necessarily at the branch attachment) and results in severe sprouting. As in pollarding, these suckers have a weak structural attachment.

There are many practices used to over-prune trees, including over-thinning, lion's tailing, lacing, framing and stripping foliage. These practices and techniques are not to be utilized.

D. Unusual Circumstances

Any structural weakness, significantly decayed trunk or branches, split crotches or limbs, insect infestations or critical disease discovered by the Contractor during the course of pruning shall be reported to the Town's Representative for determination of action, as soon as it is discovered.

When working on a tree, the Contractor shall be responsible for the removal of all vines entwined in the tree or around its trunk, and for the removal of undesirable shoot growth from tree trunks.

E. Wildlife Protection

Prior to the commencement of any work in the vicinity of any tree, each tree shall be visually surveyed, from all sides, for the sole purpose of detecting the presence of bird nests or wildlife of any type. If a bird nest is found in a tree and is determined to be active, work shall not be performed in the tree without the written permission of the Town's Representative. At no time shall any nest or wildlife be removed from its location.

3.07 CLEAN UP

Unless otherwise approved by the Town as an emergency circumstance, all debris resulting from tree pruning operations shall be removed from the work site on a daily basis. This shall include the removal of wood chips, leaves, twigs, etc. from the lawn, street, gutter and sidewalk through sweeping or blowing.

3.08 PRESERVATION OF PUBLIC AND PRIVATE PROPERTY

The contractor shall be responsible for the preservation of all public and private improvements at the site including, but not limited to, any irrigation line or heads, plant material, landscape features, fences, lights, utility boxes, etc.

Should any damage occur, it shall be reported promptly to the Town's Representative to determine the steps that will be necessary to restore it back to its former condition and to advise the homeowner of the need for repairs,

3.09 WOOD WASTE AND DISPOSAL

All wood waste shall become the property of the Contractor and in accordance with the Town's waste diversion ordinance, shall be reduced, reused or recycled. The Town does not anticipate the need for any wood chips or firewood under this project. Should this change, it is agreed that the cost savings associated with not having to dispose the material will be spent on delivering the material to a location of the Town's choosing.

3.10 EMERGENCY RESPONSE

The Contractor may be required to provide emergency on-call response for damaged trees as a result of storms or other reasons under this contract. Emergency calls may occur at any given time. The Contractor will be provided with locations and the work to be done at each location via telephone from the Town's Representative. Emergency work shall begin within ninety (90) minutes of the initial telephone call to the Contractor. Contractor shall be required to provide a twenty-four (24) hour emergency contact phone number upon award of contract.

An emergency response crew shall consist of at least two (2) fully qualified workers capable of performing whatever pruning, branch, limb or tree removal is necessary. The hourly rate paid shall include the two-man crew along with a dump truck or aerial lift, brush chipper, chip box, and all other miscellaneous tools and equipment that may be necessary to handle the emergency. The Town guarantees a minimum

of two (2) hours for each emergency call out plus an hour of travel in each direction, under the hourly rate bid.

The Contractor shall be required to provide all necessary traffic control during the course of emergency work. Should the work involve any downed high voltage power lines or other utility lines, the Contractor shall notify the responsible utility company.

3.11 WORK SCHEDULE

The Contractor shall provide the Town's Representative with work plan in the form of a two-week look-ahead schedule on a weekly basis, describing the dates and locations of anticipated tree maintenance operations.

3.12 CORRECTION OF DEFICIENCIES

Inspection of the work shall not relieve the Contractor of any obligations to complete the work as outlined in the specifications. Defective work shall be made good even if the defective work was not pointed out during the initial inspection and the work was accepted for payment. Any work found to be unacceptable by the Town will be noted in writing to the Contractor. Upon receipt of notice of any deficiencies, the Contractor shall make a reasonable effort to correct the deficiencies within five (5) working days. If unacceptable conditions are not corrected within this time period the Town shall have the right to deduct payment or have services performed by others at the Contractor's expense.

PART 4 – MEASUREMENT AND PAYMENT

4.01 SCOPE OF WORK / BID ITEM DESCRIPTIONS

The bid items listed in the Bid Schedule are not intended to be exclusive descriptions of all the work necessary to complete the project scope. As such, the Contractor shall determine, segregate and include in their pricing for each bid item the cost for furnishing all labor, materials, tools, equipment and other incidentals which may be reasonably assumed as necessary to complete all of the contract work, complete in place, as described by the Contract Documents.

The cost associated with mobilization, demobilization, bonds, insurance, preparation of submittals, project phasing, supervision, coordination and meetings with Town staff, and all other logistical or operational incidentals necessary to complete the work specified but which may not be specifically called out in the contract documents shall be included in the price paid for the various bid items of work.

* * *

END OF SECTION

Tree Maintenance Services

GENERAL PROVISIONS

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GENERAL PROVISIONS

SECTION 1 – TERMS AND DEFINITIONS

1.01 Terms – Unless otherwise stated, the words “directed, required, permitted, ordered, instructed, designated, considered necessary, prescribed, approved, acceptable, satisfactory,” or words of like meaning, refer to actions, expressions, and prerogatives of the Engineer.

1.02 Definitions – Except as amended or supplemented, whenever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows:

Agreement - The written contract documents between the Town and the Contractor covering the performance of the work.

As Shown, As Indicated, As Detailed - Where these words or words of similar import, are used, it shall be understood that reference to the drawings accompanying these specifications is made unless stated otherwise. Where "As Directed", "As Permitted", "Approved", or words of similar import, are used, it shall be understood that the direction, requirements, permission, approval, or acceptance of the Engineer is intended unless stated otherwise. As used herein, "Provide" shall be understood to mean "Provide Complete in Place" that is, "Furnish and Install", "Install" shall mean the installation complete in place of an item of equipment furnished by the Town.

ASTM - American Society for Testing and Materials specifications.

AWWA - American Water Works Association and its Standard Specifications.

Addenda - Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the Contract Documents.

Bid - The offer or proposal of the bidder submitted on the prescribed forms setting forth the prices for the work to be performed.

Bid Forms - Includes the Bid Schedule, Designation of Subcontractors, Bidders Statement of Responsibility, Bidder's Non-Collusion Affidavit, Bid Security, and all other information requested by the Bid Proposal Documents.

Bidder – Any individual, firm, partnership, corporation, or combination thereof submitting a bid for the work, acting directly or through a duly authorized representative. After the Town awards the Contract, the term “Bidder” shall be equivalent to the term “Contractor” for the purpose of identifying the Contractor's rights and obligations under the Contract Documents.

Bidding Documents - The Notice Inviting Sealed Proposals, Instruction to Bidders, Bid Proposal forms and Bidders Bond.

Bonds - Bid, performance, labor and material, and warranty bonds and other instruments of security.

Change Orders – A written order by the Engineer to the contractor making changes in the plans or specifications which is signed by the Contractor and Town authorizing an addition, deletion or revision in the work, with possible adjustment in the contract price or the contract time, issued on or after the effective date of the Agreement. If the change involves items for which there is no contract unit price, the order shall so state and stipulate that the changes shall be performed as extra work or work omitted.

Town - The Town of Loomis acting through the Town Council or any other board, body, official(s) to which or to whom the power belonging to the Town Council has been properly delegated.

Town Regulations - All written laws, rules, and policies established by the Town, including those set forth in the General Plan, Loomis Municipal Code, ordinances, resolutions, policies, procedures, and Town design documents (including the Standard Specifications, design standards, and relevant Public Facility Master Plans).

Code – The terms Government Code, Labor Code, etc., refer to codes of the State of California.

Contract – See definition for “Agreement”.

Contract Documents - See Agreement, Section 2.1, “List of Contract Documents and Precedence”.

Contract Drawings or Plans - All drawings which may have been prepared by or in behalf of the Town, as a basis for proposals, when duly signed and made a part of this contract by incorporation or reference, all drawings submitted in pursuance of the terms of this contract by the successful bidder with his proposal and by the contractor to the Town and reviewed by the Engineer; and all drawings submitted by the Engineer to the contractor during the progress of the work as provided for herein.

Contract Price - The total amount of money for which contract is awarded and as amended.

Contract Time - The number of days or the date stated in the contract as the duration for completing work.

Contract Unit Price - The Contractor’s original bid for a single unit of an item of work in the proposal.

Contractor - An individual, partnership, corporation, developer, joint venture, subdivider or other legal entity entering into a contract or agreement with the Town to perform the work covered by this contract, and their authorized agents or legal representatives. After the Town awards the Contract, the term “Contractor” shall be equivalent to the term “Bidder” for the purpose of identifying the Contractor’s rights and obligations under the Contract Documents.

Council - The Town Council of the Town of Loomis.

Day or Days - Unless herein otherwise expressly defined, shall mean a calendar day of twenty-four hours each.

Defective Work - Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of the Engineer, or requirements of any inspection, reference standard, test, or approval specified in the Contract Documents, or has been damaged prior to the Engineer’s recommendation of final acceptance. See General Provisions Section 6.01, “Materials and Workmanship”.

Directive – Any document, signed by the Town, with instruction to the Contractor pertaining to the completion of a project objective; including, but not limited to responses to requests for information, clarifications, letters of instruction, the notice of award and the notice to proceed.

Engineer - The Engineer duly and officially appointed by the Town to represent the Town and to observe the work of construction under this contract, acting personally or through agents or assistants duly authorized by him, such agents or assistants acting within the scope of the particular duties entrusted to them.

Extra Work - Performance or furnishing of work or material found necessary for the proper completion of the improvements, the payment of which is not covered by any item of the bid schedule and for which no means of payment, direct or indirect, has been provided in the contract.

Final Completion - The point at which work has been completed in accordance with the contract documents, plans and specifications to the satisfaction of the Engineer and there are no items of work remaining to be completed. See General Provisions, Section 8.22, “Final Completion”.

Force Account Work – Force account work is a method of compensation utilized to pay for extra work typically needed to overcome unanticipated work, resulting from the project work scope, necessary to complete the project work scope that cannot be well defined prior to the start of extra work. General Provision, Section 5.08 “Change Orders” establishes the specific methods of compensation for labor, materials and equipment used to perform the force account work.

Greenbook - The Standard Specifications and Plans written and promulgated by Public Works Standards, Inc., entitled “Standard Specifications for Public Works Construction”, and “Standard Plans for Public Works Construction”, current editions.

Hold Harmless - Agreement by one party to bring no claim for negligence, breach of contract, indemnity or otherwise against another party. See Agreement Section 17, “Indemnification”.

Inspector - The engineering or technical inspector(s) duly authorized or appointed by the Engineer or Town, limited to the particular duties entrusted to him or them.

Liquidated Damages - The amount of dollars assessed for each and every calendar day required to complete the contract in excess of the contract time. See General Provisions, Section 8.18, “Liquidated Damages”.

Losses - Any and all losses, costs, liabilities, claims, damages, and expenses, including, without limitation, reasonable attorneys’ fees and expenses.

Modification – Modifications to the Agreement are executed by change orders, and may only be issued after the effective date of the contract.

Notice - Any notice allowed or required to be given by the Town may be given by the Engineer.

Notice of Award – The written notice by the Town to the successful Bidder stating that upon completion of required conditions the Town will execute the contract.

Notice to Proceed – A written notice by the Town to the Contractor authorizing the Contractor to proceed with the work and fixing the date on which the contract time will start.

Plans - The contract plans and/or supplemental drawings approved by the Engineer which show the location, character, dimensions and details of the work.

Project - The total construction of which the work performed under the Contract Documents may be the whole or a part and which may include construction by the Town or by separate Contractors.

Proposal - The offer of a bidder when submitted on the proposal form, properly signed and guaranteed.

Reference Specifications - Those standards, rules, method of tests or analysis, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents. These refer to the current edition or amendments in effect at the time of advertising the project unless specifically referred to by edition, volume or date. Unless otherwise stated in the plans or specifications, the reference specification in effect shall be that edition which was in effect on the date of the Notice Inviting Bids.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the work. See General Provisions, Section 4.13, “Submittals”.

Special Provisions - Any provisions which supplement or modify these standard specifications.

Specifications – The information, directions, provisions and requirements pertaining to the work, and contained herein including Special Provisions, Technical Specification, General Provisions, those administrative subsections of Caltrans' Standard Specification that are specifically referenced in this Contract and the non-administrative sections (Section 10 through 95) of the Caltrans' Standard Specification dated May 2006.

Standard Plans - The Standard Details of the Town of Loomis, current edition, including the Parks and Streetscape Standard Plans, current edition, identifying construction standards for the various items of work indicated and/or referred to on the plans, specifications or special provisions.

Standard Specifications - The Standard Specifications of the Town of Loomis.

Standard Specifications for Public Works Construction - The Standard Specifications for Public Works Construction, "Greenbook", current edition.

State - State of California.

State Standard Plans - The Standard Plans of the Department of Transportation of the State of California, (Caltrans') Standard Plans dated May 2006.

State Standard Specifications - The Standard Specifications of the Department of Transportation of the State of California Caltrans' Standard Specification dated May 2006.

Subcontractor - Any individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the work at the site. Unless otherwise specifically provided, the term Subcontractor includes Subcontractor of any tier, suppliers, manufacturers and distributors. See Section 3.07 of the General Provisions.

Substantial Completion – When the work (or a specified part thereof) has progressed to the point where it is sufficiently complete and in accordance with the Contract Documents. See General Provisions, Section 8.20, "Substantial Completion".

Superintendent – The executive representative of the contractor responsible for the site supervision of the work at all times during progress, authorized to receive and fulfill instructions from the Engineer and to accept orders for changed and extra work.

Surety - Any individual, firm or corporation, bound with and for the Contractor for the acceptable performance and completion of the work, and the satisfaction of all obligations incurred.

Surveyor - A land surveyor licensed in the State of California.

Unbalanced Bid - See Materially Unbalanced Bid and Mathematically Unbalanced Bid.

Work - The construction and services required by the Contract Documents as amended by contract modifications, whether completed or partially completed, including all labor, materials, equipment, tools, and services provided or to be provided, by the Contractor to fulfill the Contractor's obligations. The work may constitute the whole or a part of the project

Working Day – Any day except Saturday, Sunday, Holidays observed by the Town, or days in which the Contractor is entitled to an excusable delay. Holidays observed by the Town are: Thanksgiving, day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, and Veteran's Day. See General Provisions, Section 8.19, "Delays and Extension of Time".

SECTION 2 – PROPOSAL REQUIREMENTS AND CONDITIONS

2.01 General - Bidders may obtain complete sets of the Contract Documents, including the proposal forms to be used for bidding, at the location designated in the Notice to Bidders. Bidders shall use complete sets of Contract Documents in the preparation of bids. The Town makes copies of the Contract Documents available, on the above terms, for the sole purpose of obtaining Bids for the work and does not confer a license or grant permission for any other use of the Contract Documents.

2.02 Proposal Forms – The portion of the Contract Documents entitled “Bid Proposal” focuses the Bidders attention on the requirements for submitting a proposal, including the Notice to Bidders, and the Bid Proposal Forms.

Bids are required for the entire work described herein and shall be submitted on the blank forms prepared by the Town and provided herein. The Bid Proposal submitted to the Town shall consist of the completed Bid Schedule, Designation of Subcontractors, Bidders Statement of Responsibility, Bidder’s Non-Collusion Affidavit, Bidder’s Qualifications, Bidders References, Signature of Bidder, Bid Guaranty, and all other information requested by the Bid Proposal documents.

All proposals shall type or print legibly in ink the proposed prices both in writing and in figures and shall be signed, with address included, by the bidder or the bidder's authorized representative. Corrections must all be individually initialed by the Bidder. Bidder shall not modify or qualify the Bid Forms in any manner.

The Bid Forms shall be signed by a person or persons legally authorized to bind the Bidder to the Contract. The individuals signing each document shall warrant that they are authorized to bind the legal entity of the Bidder. Proposals made by individuals must show the individual's signature and post office address; if made by a firm or partnership and the signature of one or all of the partners must be shown. Proposals submitted by corporations must show the name and post office address of the corporation, the name of the state, under whose laws the corporation is chartered, and the signature and title of the person signing on behalf of the corporation.

2.03 Qualifications of Bidders - Each bidder shall be licensed as specified in the Notice to Bidders and in accordance with the provisions of Chapter 9, Division 3, of the Business and Professions Code, State of California, and shall be skilled and regularly engaged in the general class or type of work called for under this contract.

It is the intention of the Town to award a contract only to a bidder who is able to furnish satisfactory evidence that he has the requisite experience and ability and that he has sufficient capital, facilities and plant to enable him to prosecute the work successfully and promptly, and to complete it within the time set forth in the contract.

In determining the degree of responsibility to be credited to a bidder, the Town will weigh any evidence indicating the bidder, or personnel guaranteed to be employed in responsible charge of the work, has satisfactorily performed other contracts of like nature and magnitude.

2.04 Rejection of Proposals Containing Alterations, Erasures, or Irregularities - Proposals may be rejected if they show any alterations of form, additions not called for, conditional or alternative bids, incomplete bids, irregularities of any kind, or corrections and erasures without initials by the Bidder.

2.05 Submission of Bids - All Bid Forms, including all documents required to be submitted with the Bid, shall be enclosed in a sealed opaque envelope. The envelope shall be clearly marked on its face with the Bidder’s name and address, and the notation “SEALED BID ENCLOSED, TOWN OF LOOMIS”, with an identification of the project name and number as identified in the Notice to Bidders. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope. Oral, telephonic, facsimile, telegraphic, or electronically transmitted Bids are invalid and will not be accepted.

Bids may be mailed or delivered by messenger. It is the Bidder’s responsibility alone to ensure that the Bid is received prior to the bid opening deadline at the place specified in the Notice to Bidders.

Whether or not bids are opened exactly at the time fixed in the public notice inviting bids, any bid received after that time shall be returned unopened.

2.06 Approximate Estimate - The quantities listed in the bid schedule are approximate only, supplied as a general indication of the scope of work and to be used as a basis for comparing bids. The Town does not expressly or by implication agree that the actual amount of work will correspond therewith, and reserves the right to increase or decrease the amount of any class or portion of the work, or to delete any portions of the work in their entirety, from the quantities listed on the bid schedule, as may be deemed necessary or advisable by the Engineer.

2.07 Examination of Plans, Specifications and Work Site - Bidder shall examine carefully the plans, specifications, proposal and contract forms, and the physical site of the work contemplated, regardless of if a site walk or pre-bid meeting has been scheduled by the Town or not.. It will be assumed that the bidder has investigated and is aware of the conditions to be encountered in carrying out the proposed work, and is fully satisfied as to the scope, character, quality, quantity and requirements of the proposed work, and the submission of a bid will be an acknowledgement of that assumption.

The bidder shall receive no additional compensation for obstacles or difficulties due to surface or subsurface conditions actually encountered. Where investigations of surface or subsurface conditions have been made by the Town in respect to foundation or other structural design, and that information is shown in the plans, said information is included only for the convenience of bidders. The Town assumes no responsibility whatsoever as to the sufficiency or accuracy of borings, or of the log of test borings or other investigations or tests, or of the interpretation thereof; there is no guaranty, warranty or representation, express or implied, that the conditions indicated thereby in fact exist or are representative of those existing throughout the work. Such information shall be used as a basis for bids at the bidder's own and sole risk; making such information available to bidders is not to be construed in any way as a waiver of the other provisions of this paragraph, and bidders must satisfy themselves through their own investigation as to the surface and subsurface conditions to be encountered at the site. By submitting a Proposal, the Bidder has certified that he has examined all items indicated in Section 2.07, "Examination of Plans, Specifications, and Site of the Work."

Each proposal shall be enclosed in a sealed envelope and endorsed as specified in the Notice Invited Sealed Proposals. Bidders are warned the proposals containing irregularities of any kind, including erasures, omissions, conditions, alterations, or additional proposals may be rejected.

2.08 Withdrawals of Proposals - Any proposal may be withdrawn at any time prior to the time fixed in the Notice Inviting Sealed Proposals for the opening of bids, provided that a request in writing, executed by the bidder or his duly authorized representative, for the withdrawal of such bid, is filed with the Town. The withdrawal will not prejudice the right of a bidder to file a new proposal.

2.09 Proposal Guaranty - Each proposal shall be accompanied by either a certified check, cashier's check, or bidder's bond of a surety company acceptable to the Town in an amount not less than ten percent (10%) of the bid amount, and shall be made payable to the Town.

2.10 Disqualification of Bidders - More than one proposal from an individual, firm or partnership, a corporation, or an association under the same or different names will not be considered. Reasonable grounds for believing that any bidder is interested in more than one proposal for the work will be the cause of the rejection of all proposals in which such bidder is interested. If there is a reason to believe that collusion exists among the bidders, none of the participants in such collusion will be considered. Proposals in which the prices obviously are unbalanced may be rejected.

2.11 Bid Protest Procedures – Any protest of the proposed contract award shall be submitted in writing to the Town Clerk no later than 5:00 p.m. on the fifth (5th) business day following the date of the bid opening. If the fifth day falls on a weekend or holiday, the last day of the protest period shall be the first working day following the fifth day.

The protest must include the name, address, and telephone number of the person representing the protesting party. In addition,

- (a) The party filing the protest must have submitted a bid for the Project. A Subcontractor of a party filing a bid for the project may not submit a bid protest.
- (b) The protest must contain a complete statement of the basis for the protest, and refer to the specific portion of the Contract Documents or the specific statute that forms the basis for the protest.
- (c) The party filing the protest must concurrently transmit a copy of the protest to the proposed awardee.

Any bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing of a challenge of the award pursuant to the California Public Contract Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.

The Town shall review all timely protests prior to the award of contract. The Town shall not be required to hold an administrative hearing to consider any protests, but may do so at its option. At the time of the Town Council's consideration of the project award, the Town Council shall also consider the merits of any timely protests. The Town Council may either reject the protest and award the project to the lowest responsible bidder or accept the protest and award the project to the next lowest responsible bidder. Nothing in this section shall be construed as a waiver of the Town Council's right to reject all bids.

2.12 List of Subcontractors - In accordance with Chapter 2, Division 5, Title 1 of the Government Code, each proposal shall have listed the name and address of such subcontractor to whom the bidder proposes to sublet portions of the work. A subcontractor is defined as one who contracts with the contractor to furnish materials and labor, or labor only, for performance of work at the building site. Subcontractors shall be listed on the form provided herewith.

SECTION 3: REVIEW OF BIDS, CONTRACT AWARD AND EXECUTION

3.01 Public Bid Opening and Initial Review - Bids which have been submitted in accordance with the requirements of the Bidding Documents, and which are received on or before the bid deadline will be opened publicly, and the dollar amounts of each bid shall be read aloud.

The Town shall have the right to reject all bids. The Town shall have the right to reject any bid not accompanied by the required bid security or any other item required by the Bidding Documents, or a bid which is in any other way incomplete or irregular. The Town shall have the right to waive irregularities in a bid, and to award the Contract to the Lowest Responsible Bidder (as determined by the Town), only if the irregularities are non-material and inconsequential.

3.02 Determination of Lowest Responsible Bidder - Criteria for determining low bid in all contracts with the Town involving an expenditure of \$5,000.00 or more shall be determined as the "Lowest Monetary Bidder" on the basis of the Engineer's approximate estimate of the quantities of work to be done as set forth in the Bid Schedule, in accordance with the calculation criteria set forth on the bid.

After the Lowest Monetary Bidder has been determined, the Engineer shall review that Bidder's bid in order to determine whether or not that Bidder is the "Lowest Responsible Bidder." The term Lowest Responsible Bidder shall mean the Lowest Monetary Bidder whose bid is responsive, and who is responsible to perform the work, as required by the Contract Documents.

The term "responsive" is defined by California law, but generally means that the bid has been prepared and submitted in accordance with the Bidding Requirements. The term "responsible" is defined by California law, but generally means that the Bidder is able to demonstrate that it possesses: (1) the capability to perform the work required by the Contract Documents with respect to financial strength, resources available, and experience; and (2) the integrity and trustworthiness to complete performance of the work in accordance with the Contract Documents.

The Town will make its determination of responsibility based upon information submitted by Bidders contained in the Bidders Qualifications and Bidders References included in the Bid Forms and, if necessary, through interviews with previous cities, clients, design professionals, or subcontractors with whom the Bidder has worked. In determining whether or not a Bidder is responsible, the Town may consider the following factors in relation to the work to be performed for this Project:

- (a) Demonstrated financial strength including, but not limited to, resources available, bonding capability, and available insurance.
- (b) Demonstrated safety record including, but not limited to, Experience Modification Rate.
- (c) Successful completion of projects of similar scope and size. In reviewing this factor, the Town may consider elements including, but not limited to, contract amount of completed projects, experience on public works projects, experience implementing prevailing wage certified payroll requirements, timeliness of performance and, if necessary, evaluation of the Bidder's work by previous cities, clients, design professionals, or subcontractors.
- (d) Sufficiency of contract administration and construction management systems including, but not limited to, proposed scheduling tools, proposed subcontract forms, proposed progress payment applications, and proposed certification of payroll documents.
- (e) History of claims, litigation, termination or disqualification from projects.

If the Engineer finds that the Lowest Monetary Bidder submitted a responsive Bid and that the Bidder is responsible, then that Bidder shall be deemed the apparent "Lowest Responsible Bidder," and the Engineer shall report the findings to the Town Council.

If the Engineer finds that the Lowest Monetary Bidder's bid is not responsive, or that the Lowest Monetary Bidder is not responsible, then the Engineer may review the responsiveness and responsibility of the next Lowest Monetary Bidder. If the Engineer finds that the next Lowest Monetary Bidder is

responsive and responsible, then that next lowest Bidder shall be deemed the apparent "Lowest Responsible Bidder," and Engineer shall report its findings as recommendations to the Town Council. This process may continue until the Engineer finds the Lowest Monetary Bidder which is also responsive and responsible.

In the event that one or more Low Monetary Bidders are found by the Engineer to be non-responsive or non-responsible, those Bidders will be given notice and a reasonable opportunity to present additional relevant evidence to the Engineer for consideration, within five (5) working days after the Bidder receives the notice.

All findings by the Engineer shall be reported as recommendations to the Town Council. The Town Council reserves the right to reject any or all Bids, and to waive any irregularity. No Bid shall be binding upon the Town until after the Agreement is signed by both the Contractor and the Town. If the Town Council determines that it is in the Town's best interest to award the Agreement, a Notice of Award shall be sent to the Lowest Responsible Bidder as determined by the Town Council. The Town Council's decision shall be final.

The Town may investigate the responsibility and qualifications of all Bidders to whom the award is contemplated for a period not to exceed ninety (90) calendar days after the Bid opening, during which time no bid shall be withdrawn by the Bidders. The ninety (90) day review period may be extended upon the written request by the Engineer and written approval by the affected Bidder.

3.03 Award of Contract - Award of contract, if awarded, shall be made after the Town Council makes a determination as to which Bidder is the Lowest Responsible Bidder, the Town shall issue a Notice of Award to the Lowest Responsible Bidder. Within ten (10) calendar days after receipt of the Notice of Award, Bidder shall submit to the Town two (2) originals of the signed agreement, the required improvement securities, proof of insurance, a Town of Loomis business license and a copy of the required State Contractor's license. After the Bidder has properly submitted these documents, the Town will execute the Agreement and issue a Notice to Proceed.

3.04 Execution of Contract - The contract agreement shall be signed by the successful bidder in quadruplicate, three copies shall be filed with the Town and one copy shall be delivered to the Contractor and returned to the Town, together with the contract bonds and Certificates of Insurance, within fifteen (15) days after the notice of award has been sent to him by mail at the address given by him in his proposal. If the bidder fails or refuses to enter into a contract to do the work, then the proposal guaranty accompanying the bid shall be forfeited to the Town.

3.05 Status of Contractor - The right of general supervision by the Town shall not make the contractor an agent of the Town, and the liability of the contractor for all damages to persons or to public or private property arising from the contractor's execution of the work shall not be lessened because of such general supervision.

3.06 Assignment - No agreement or portion thereof maybe assigned without consent of the Council, except that the Contractor may assign money due which will accrue to him under the Agreement. If given written notice, such assignment will be recognized by the Town to the extent permitted by law, but any assignment of money shall be subject to all proper setoffs and withholdings in favor of the Town and to all deductions provided for in the Agreement. All money withheld, whether assigned or not, shall be subject to being used by the Town for completion of the work, should the Contractor be in default.

Any attempt to assign or delegate the Agreement without the written consent of the Town shall be void and of no force and effect. Consent by the Town to one assignment shall not be deemed to be consent to any subsequent assignment.

3.07 Recognition of Subcontractors - No subcontractors will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the contractor and their work shall be subject to the provisions of the contract, including specifically these general stipulations, the specifications and the contract drawings.

3.08 Return of Bid Security - Within ten (10) working days after the execution of the Agreement, the Town will return the proposal guarantees accompanying the proposals that are not to be considered in making the award. All other proposal guarantees will be held until the Agreement has been fully executed, after which, they will be returned to the respective bidders whose proposals they accompanied.

3.09 Forfeiture of Proposal Guaranty - If Bidder does not properly execute the contract and submit the acceptable bonds, insurance and certifications within the specified time; this shall be just cause for the annulment of the award and the forfeiture of the proposal guaranty to the Town. The Town may then award the contract to next Lowest Responsible Bidder. The forfeited proposal guaranty may be utilized by the Town in accordance with Public Contract Code, Sections 20170 through 20174.

3.10 Contract Bonds - Before execution of the contract by the Town, the Contractor shall file with the Town surety bonds satisfactory to the Town in the amounts, and for the purposes, noted below. Said bond shall be on the form furnished by the Town herein.

- (a) *Performance Bond* - The contractor shall furnish and bear the cost of a bond of a surety company acceptable to the Town, which bond is conditioned upon the faithful performance of all covenants and stipulations under this contract within the time prescribed, in a manner satisfactory to the Town, and that all materials and workmanship will be free from original or developed defects. The amount of the bond shall be one hundred percent (100%) of the total contract price; as such sum is set forth in the agreement.

Said bond shall be on the form furnished by the Town herein.

As a condition precedent to satisfactory completion of this contract, an amount equal to ten percent (10%) of the estimated contract cost shall hold good for the period specified in said bond after completion and acceptance of the work by the Town.

- (b) *Labor and Material Bond* – The contractor shall furnish and bear the cost of a bond of a surety company acceptable to the Town in the sum not less than one hundred percent (100%) of the total contract price, as such sum is set forth in the agreement, for the payment in full of all persons, companies, or corporations who perform labor upon or furnish materials to be used in the work under this contract, in accordance with the provisions of Section 4200 to 4208, inclusive (Chapter 3, Division 5), of the Government Code of the State of California, and any acts amendatory thereof. The bond shall be maintained by the Contractor in full force and effect until the work is accepted by the Town and until all claims for materials and labor are paid.

Said bond shall be on the form furnished by the Town herein.

- (c) *Warranty Bond* - The Contractor shall furnish a warranty bond in the amount of ten percent (10%) of the final contract price (total cost including change orders) to guaranty his work for one (1) year after acceptance of the work by the Town Council.

Bonds shall be duly executed by a responsible corporate Surety, licensed and authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California. Each bond shall be signed by both the Contractor and Surety and the signature of the authorized agent of the Surety shall be notarized.

The Contractor shall pay all bond premiums, costs and incidentals. Should any bond become insufficient due to an increase in the contract amount, the Contractor shall obtain supplemental bonding within ten (10) days.

Should any Surety at any time be unsatisfactory to the Town, notice will be given the Contractor to that effect. No further payments shall be deemed due or will be made under the Agreement until a new Surety shall qualify and be accepted by the Town.

Changes in the work, or extensions of time, made pursuant to the Agreement, shall in no way release the Contractor or Surety from their obligations. The requirement for notifying the Surety of such changes or extensions shall be waived by the Surety.

3.11 Notification of Surety Companies - The surety companies shall familiarize themselves with all conditions and provisions of this contract and they waive the right of special notification of any change or modification of this contract or of extension of time, or of decreased or increased work, or of the cancellation of the contract, or of any other act(s) by the Town or Town's authorized agents, under the terms of this contract, and failure to so notify the aforesaid surety companies of changes shall in no wise relieve the surety companies of their obligation under this contract.

3.12 Power of Attorney - Attorneys-in-fact who sign bid bonds or contract bonds must file a certified and effectively dated copy of their Power of Attorney with each bond.

3.13 Insurance Requirements - Contractor shall provide at his own cost and expense from contract award date to acceptance of the work covered by the contract:

- (a) Workmen's Compensation and Employer's Liability Insurance of not less than the amount shown in the Special Provisions for all of his employees to be engaged in the work under this contract. Should any such work be sublet, the contractor shall require each of his subcontractors at any tier similarly to provide Workmen's Compensation and Employer's Liability Insurance, all in strict compliance with Federal and State laws.
- (b) Personal Injury, Bodily Injury and Property Damage Liability Insurance (including automobiles, products and/or completed operations coverage) and Aircraft and Watercraft Bodily Injury Liability and Property Damage Liability Insurance if contractor uses owned or non-owned water aircraft in his operation, with Personal Injury and Bodily Injury (including death resulting therefrom) of not less than a combined Personal Injury and Property Damage Liability limit of not less than the amount shown in the Special Provisions. Should any work covered by the contract be sublet contractor shall require each of his subcontractors of any tier similarly to provide the aforesaid coverages.
- (c) All Risk (excluding Earthquake and Flood) Builder's Risk Insurance in an amount not less than the value of any work under this contract, except for buried pipelines and appurtenances which need not be included in the insurance value. Under the policies of insurance described above, each policy shall contain the provision for thirty (30) days written notice submitted by registered mail from the insurance carrier(s) to the Town prior to cancellation or reduction in coverage.

3.14 Special Requirements - Under the policy of insurance described in Section 13.13-b, the policy shall contain the following provisions:

- (a) The Town and the Town's officers, representatives, agents and employees shall be named as additional insureds.
- (b) Endorsement providing that such insurance is primary insurance and no insurance of the additional insureds shall be called on to contribute to a loss.
- (c) Endorsement providing that such insurance shall not contain any exclusion regarding loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU" hazards.
- (d) Standard cross-liability clause covering personal injury, bodily injury (including death resulting therefrom), and property damage.

3.15 Builders Risk Insurance - Under the policy of insurance, the policy shall contain the following provisions:

- (a) The Town shall be included as insured.

(b).. Losses shall be payable to the contractor and Town as their interest may appear.

(c).. Deductible amounts of all losses covered by insurance shall be borne by the contractor.

3.16 Certificates - Prior to beginning work, contractor shall furnish certificates satisfactory to the Town as to contents and carriers of such insurance.

3.17 Legal Address of Contractor - Contractor's address as shown in the proposal, as well as such office or headquarters the contractor establishes at the site of work, hereby are designated as addresses to which drawings, samples, notices, letters, articles, or other communications to the contractor may be mailed or delivered. The delivery at either of these places of any item or communication from the Town or agents thereof to the contractor shall be deemed sufficient service of such delivery. Contractor's address as shown in the proposal may be changed at any time by notice in writing from the contractor to the Town. Nothing herein contained shall be deemed to preclude or render inoperative the service of any drawing, sample, notice, letter, or other article of communication to or upon the contractor personally.

3.18 Office of Contractor at Site - During the performance of the contract, contractor shall maintain a suitable office at the site of work which shall be the headquarters of a representative authorized to receive drawings, instructions or other communications or articles from the Town or Town's agents; any such thing given to said representative or delivered at the contractor's office at the site of work in his absence shall be deemed to have been given to the contractor. Contractor shall maintain a complete set of plans and specifications at the site office whenever work is in progress.

SECTION 4 - SCOPE AND CONTROL OF WORK

4.01 Work to be Done – The work to be done consists of furnishing all labor, materials, tools, equipment and services necessary to complete the project, as further described in the Notice to Bidders of these Specifications, and as necessary to leave the site in a neat and finished condition with all equipment properly installed and working to the satisfaction of the Engineer.

While the Town has endeavored to accurately represent in the plans and specifications the physical conditions which may affect the cost of the proposed work, the Town does not warrant the completeness or accuracy of such information. It is the Contractor's responsibility to ascertain the existence of any such conditions affecting the cost of the work, which would have been disclosed by reasonable examination of the site.

Conclusions pertaining to any test, investigation, statement or estimate of fact incorporated in the plans and specifications shall be considered by the Contractor to be a recommendation only. The Contractor may request equal access to the underlying or background information to arrive at his own opinion thereon, including his determination of how reliable might be any conclusion appearing in (or inferred from) the information. The Contractor may not rely upon "record drawings" or similar final or accepted drawings or maps constructed on public or private property. Such information may be used for reference only. Actual locations and depths shall be determined by field investigations by the Contractor.

No oral or telephonic agreement or conversation with any officer, agent, or employee of the Town or the Engineer, either before or after execution of the contract, shall affect or modify any of the terms or obligations contained in any of the contract documents.

4.02 Plans and Specifications - It is the intent of the Plans and Specifications to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. For convenience, the Specifications are arranged in several sections, but such separation shall not be considered as the limits of the work required by any separate trade. The terms and conditions of such limitations are wholly between the Contractor and his subcontractors. In general, the Special Provisions, General Provisions, and other sections of the specifications indicate the responsibilities of the Contractor and the quality of material and methods of workmanship. The plans indicate dimensions, quantities, positions, and various other details of construction.

Any work, materials or equipment that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words, which have a well-known technical or trade meaning, are used to describe the work, materials or equipment, such words shall be interpreted in accordance with that meaning. See General Provisions, Section 6.03, "Trade Names or Equals".

Subheadings and titles printed on the drawings in these General Provisions, in the specifications, and elsewhere in the contract documents, are inserted for the convenience of reference only, and shall not be taken or considered as having any bearing on the interpretation thereof.

4.03 References to Standards and Codes - Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of the opening of bids (or, on the Effective Date of the Agreement if there were no bids), except as may be otherwise specifically stated. However, no provisions of any referenced standard specifications, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Town, Contractor or Engineer, or any of their consultants, agents or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to the Engineer, or any of the Engineer's Consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility for the Contractor.

4.04 Authority of the Engineer – The Town has the final authority in all matters affecting the work. Within the scope of the Agreement, the Engineer has the authority to enforce compliance with the

Plans and Specifications and the Contractor shall promptly comply with instructions from the Engineer. The decision of the Engineer is final and binding on all questions relating to: quantities; acceptability of materials furnished and work performed; equipment; work execution, rate of progress or sequence of work; and interpretation of the Plans, Specifications, or other drawings. This shall be precedent to any payment under the Agreement, unless otherwise ordered by the Town.

4.05 Contract Documents and Precedence - The Contract Documents consist of the documents listed below, in order of precedence. If there is a conflict between component parts of the Contract Documents, the document highest in precedence controls.

- a. Change Orders.
- b. Project Directives.
- c. Permits issued by other agencies.
- d. Permits issued by the Town.
- e. Agreement and required agreement forms – Bid Bond, Faithful Performance and Labor and Materials Bonds, Warranty Bond, Insurance Endorsements, Worker’s Compensation Certification.
- f. Project Specifications, in the following order - Addenda, Bid Proposal including all Bid Proposal Forms, Notice Inviting Sealed Proposals, Special Provisions, Technical Provisions, Exhibits to the Proposal, and General Provisions.
- g. Project Plans and Drawings.
- h. Town Standard Specifications.
- i. Town Standard Plans.
- j. Reference Specifications, in the following order – State of California Department of Transportation (Caltrans) State Standard Specifications (current edition), Standard Specifications for Public Works Construction “Greenbook”.
- k. Reference Plans, in the following order – State of California Department of Transportation (Caltrans) State Standard Plans (2006 edition), Standard Plans for Public Works Construction (2006 edition).

All of the individual components of the Contract Documents are intended to be complementary and what is required by one shall be binding as if required by all. Interpretation of a disputed meaning or intent of the plans and specifications shall be made initially by the Engineer in accordance with the application of the order of precedence. Any final decision required regarding precedence and the clarification of discrepancies in the Contract Documents shall be made by the Engineer.

4.06 Interpretation of Specifications and Drawings - The specifications and the contract drawings are intended to be explanatory of each other. Any work indicated in the contract drawings and not in the specifications, or vice versa, is to be executed as if indicated in both. Should it appear that the work to be done, or any of the matters relative thereto are not sufficiently detailed or explained in these contract documents, including the contract drawings, the contractor shall apply in writing to the Engineer for such further explanations as may be necessary and shall conform thereto as part of this contract so far as may be consistent with the terms of the contract. Should any doubt or question arise respecting the true meaning of the specification, the Engineer shall make the final decision.

4.07 Figured Dimensions - Figured dimensions on the contract drawings shall in all cases be given precedence over scaled dimensions. If figured dimensions do not correspond to scaled dimensions, contractor shall request Engineer to verify the accuracy of the figured dimensions. It shall be the responsibility of the contractor to ascertain the correct scale of all contract drawings in his possession, including those which may have been reduced for reproduction.

4.08 Errors or Discrepancies - If the contractor, in the course of the work, discovers any discrepancies between the drawings and the conditions of the ground, or any errors or omissions in the drawings or in the layout given by stakes, points or instructions, it shall be his duty to inform the Engineer

immediately in writing, and the Engineer shall promptly verify the same. Any work done after such discovery, until authorized, will be done at the contractor's risk.

4.09 Drawings to be Furnished by Contractor - As soon as practical after the execution of this contract, the contractor shall supply drawings of devices to be furnished hereunder as are called for herein or as are required by the Engineer to make clear the details of construction and to demonstrate fully that all materials and equipment comply with the intent and provisions of this contract. Unless otherwise herein specified, such drawings shall be submitted to the Engineer for his review. Should the Engineer take exception with any drawings furnished by the contractor, the contractor shall make the revisions required, and resubmit them to the Engineer for review. After a satisfactory review by the Engineer, these drawings shall become a part of this contract and the work shall be done in conformity therewith. No such work shall be begun or devices purchased until the review of the drawings detailing such items have been completed. The review of the drawings shall not relieve the contractor of responsibility, or waive or modify any of the provisions or requirements of this contract.

The Engineer's review of drawings submitted by the contractor will be for, and will cover, only generally conformity to the plans and specifications and will not constitute a blanket approval of all dimensions, quantities and details of the material or equipment shown by (nor shall review relieve the contractor of his responsibility for errors contained in) such drawings.

All shop drawings submitted by the various subcontractors which require review of the Town's representative shall first be sent to the contractor who shall keep a record of the drawing numbers and the date of their receipt by him. Contractor shall submit the drawings to Town's representative for review in time to prevent delays in delivery of materials.

Contractor shall thoroughly check all such shop drawings for measurements, size of member, materials and details to make sure they conform to the intent of the plans and specifications. Drawings found to be inaccurate or otherwise in error shall be returned by the contractor to the subcontractor for correction before they are submitted by the contractor to the Town's representative for review.

4.10 Additional Drawings by Town - Contract drawings are intended to be comprehensive and to indicate in detail the scope of the work. However, the Engineer may furnish the contractor additional drawings during the progress of the work in order to clarify and define in greater detail the intent of the contract drawings or specifications. Contractor may request such detailed drawings by submitting his request in writing to the Engineer at least two (2) weeks in advance of the time they are required.

4.11 Lines and Grades - All work under this contract shall be constructed to the lines, grades and elevations shown on the contract drawings. Contractor shall establish the lines, grades and elevations unless it is otherwise specified in the Special Provisions.

4.12 Record Documents - The Contractor shall keep at the worksite a record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directives, Field Orders and written interpretations and clarifications. These record documents together with all approved submittals, samples and shop drawings will be available to the Engineer as a reference at all times. Upon completion of the work, these record documents will be delivered to Engineer.

4.13 Record Drawings - The Contractor shall prepare and update a master "as-built" set of red ink-lined plans, to be reviewed and approved by the Engineer at the end of every month. Drawings shall contain information showing where actual installation differs from that shown on the original drawings, where underground or concealed features are found noting alignment (to 0.25') and elevation (to 0.1'), field changes or deletions of work, and any additional work by change order. Upon the project's completion, and prior to the project's acceptance, the Contractor shall submit to the Town the completed as-built record Drawings on one (1) set of full size prints prepared on 22" x 34" paper.

Record Drawings are full size drawings (Plans) which marked up during construction to delineate the actual in-place constructed conditions. Record Drawings shall be provided by the Contractor for this Project. Requirements for Record Drawings as specified elsewhere shall supplement the requirements specified herein.

4.14 Reuse of Documents - Neither the Contractor nor any Subcontractor or supplier or other person or organization performing or furnishing any of the work under a direct or indirect agreement with the Town shall have any title or rights to any of the Drawings, Specifications or other documents (or copies thereof) which bear the seal of the design engineer. Such documents shall not be reused on extensions of the project or for any other project without written consent of the Town and the design engineer.

4.15 Subsurface Data – If completed, all soil and soil test data, water table elevations, and soil analyses included or referred to in the Contract Documents apply only at the location of the test holes and to the depths indicated. If completed, soil test reports for test holes which have been drilled are available for inspection at the office of the Engineer. Any additional subsurface exploration shall be done by Bidders or the Contractor at their own expense.

The elevation of the water table indicated by soil test reports is that which existed on the date the test hole was drilled. It is the Contractor's responsibility to determine and allow for the possibility of differing ground water elevations on the date of the project's construction. A difference in elevation between ground water shown in soil boring logs and ground water actually encountered during construction will not be considered as a basis for extra work.

4.16 Right-of-Way – Acquisition of right-of-way or permanent easements necessary for the improvements as shown on the plans will be provided by the Town. Unless otherwise provided, the Contractor shall make his own arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas, easements, and temporary facilities required. Contractor shall identify and hold the Town harmless from all claims for damages resulting from such actions.

4.17 Removal of Defective and Unauthorized Work - Should the Contractor deliberately proceed with any portion or phase of construction which is obviously incorrectly indicated in the contract plans or documents, he shall be responsible for any corrective measures required to make adequate repairs or adjustment. This shall include any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority.

All work that has been rejected shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. If the Contractor fails to remedy rejected work within ten (10) working days after written demand, the Town may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. The Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which the Contractor is liable to the Town, including reasonable attorneys' fees and expenses and compensation for the Town's services and expenses.

4.18 Acceptance of Defective Work - The Town shall have the option, at its sole discretion and by written notice to the Contractor, to accept defective work instead of requiring its removal or correction, in which case the contract sum shall be reduced by an amount equal to the difference between the value to the Town such work would have were it complete, correct, and in conformity with the Contract Documents and the value to the Town of such defective work. Such option shall be exercised solely by written notice to the Contractor and shall not be implied from any act or omission by the Town or the Engineer. If the remaining payments and retention are insufficient to cover the amount of the reduction of the contract sum, the Contractor shall promptly pay to the Town the amount of any such deficiency.

4.19 Submittals - Within ten (10) working days following the Notice to Proceed, the Contractor shall provide a detailed list for review and approval of all individual submittals required to be submitted under the contract. The list shall reference the specification section and paragraph that requires the submittal along with the date the Contractor plans to transmit the submittal to the Town for review.

Unless otherwise requested by the Engineer, submittals shall be provided electronically in .pdf format at least twenty-eight (28) calendar days prior to the approval being necessary for the work. Submittals shall be transmitted with a Submittal Cover Letter form as approved by the Engineer. Large submittals consisting of reports, oversized or colored pages, full sized shop drawings, manuals contained in binders, or submittals in other forms not easily reproduced shall be provided in hard copy format with six (6) copies.

For items requiring shop drawings, no materials shall be furnished, and no work shall be performed, until the drawings have been favorably reviewed. Shop drawings shall be of a size and scale to clearly show all necessary details.

After review by the Town of each of the Contractor's submittals, the material will be returned to the Contractor marked with actions defined as follows:

- (a) NO EXCEPTIONS TAKEN - Accepted subject to its compatibility with future submissions and additional partial submissions for portions of the work not covered in this submission. Does not constitute acceptance of deletion of specified or required items not shown in a partial submission.
- (b) MAKE CORRECTIONS NOTED - The same as item (a), except that minor corrections as noted by the Town shall be made by the Contractor. No resubmission is required.
- (c) REVISE AND RESUBMIT - Rejected because of major inconsistencies or errors which shall be resolved or corrected by the Contractor prior to subsequent review by the Town.
- (d) REJECTED - Submitted material does not conform to plans and Specifications in major respects. This material is not expected to be resubmitted.
- (e) SUBMIT SPECIFIED ITEM - Submittals not reviewed by the Town but received for record purposes.

Favorable review of the shop drawings by the Engineer is interpreted to mean that there is substantial and acceptable conformance with the contract plans, but details of design may not necessarily be checked for adequacy or accuracy. Such acceptance shall not relieve the Contractor from the responsibility for errors or omissions in the shop drawings or from deviations from the contract documents unless such errors, omissions, or deviations were specifically called to the attention of the Engineer in writing. The Contractor shall be responsible for the correctness of the shop drawings, for shop fits and field corrections, and for the results obtained by the use of such plans.

4.20 Substitutions – Proposed requests by the Contractor for changes in products, materials, equipment, and methods of construction required under the Contract Documents after the award of contract are considered "requests for substitutions." For proposed "or equal" substitutions, attention is directed to General Provision Section 6.03, "Trade Names or Equals."

Each request for substitution shall be prepared and presented to the Town in accordance with the procedures for submittals, except that the following additional information shall be provided.

- (a) An explanation of the advantages to the Town for accepting the substitution.
- (b) A comparison of significant qualities of the proposed substitution with those specified.
- (c) A list of changes or modifications needed to other parts of the work and to construction performed by the Town and separate Contractors, that will be necessary to accommodate the proposed substitution.
- (d) A statement indicating the substitution's effect on the Construction Schedule compared to the Baseline Construction Schedule without acceptance of the substitution. Indicate the effect of the proposed substitution on overall contract time.
- (e) Cost information, including a proposal of the net change, if any, in the Contract Sum.
- (f) Certification that the substitution is equal to or better in every respect to that required by Contract Documents, and that it will perform adequately in application indicated. Include Contractor's waiver of rights to additional payment or time extensions, that may be necessary because of the substitution's failure to perform adequately.

No extension of time will be allowed through failure of the Contractor to either transmit requests for substitution sufficiently in advance of the work, or on account of processing time outside the time limits noted.

4.21 Construction Staking Lines and Grades - Unless otherwise stated in the Special Provisions,

the Contractor shall provide, preserve, and replace if necessary, all of the necessary construction stakes required for the construction of the project. Grades for underground conduits will be set on the ground surface and shall then be transferred to the bottom of the trench by the Contractor.

Stakes or marks will be set by a California Licensed Surveyor or a California Registered Civil Engineer to establish the lines and grades required for the completion of the work as specified in the Contract Documents. It shall be the Contractor's responsibility to notify the Engineer of any discrepancies found between field grades and notes shown within the Contract Documents.

Contractor shall furnish horizontal control and cut sheets to the Engineer immediately upon the setting of construction or boundary markers. Upon completion, all work shall conform to the lines, elevations, and grades shown on the plans.

4.22 Inspection of the Work - All work is subject to inspection and approval of the Engineer. Unless otherwise stated in the specifications, the Town shall perform all required inspections. The Contractor shall notify the Engineer before noon of the working day before inspection is required. Unless otherwise authorized, work shall be done only in the presence of the Engineer. Any work done without proper inspection will be subject to rejection. The Engineer shall at all times have access to the work during its construction at shops and yards as well as the project site. The Contractor shall provide every reasonable facility for ascertaining that the materials and workmanship are in accordance with the Contract Documents. Inspection of the work shall not relieve the Contractor of the obligation to fulfill all conditions of the contract.

If a portion of the work is covered contrary to the Engineer's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the Engineer, be uncovered for the Engineer's observation and be replaced at Contractor's expense without adjustment of the contract time or the contract sum.

If a portion of the work has been covered, which is not required by the Contract Documents to be observed or inspected prior to it's being covered and which the Engineer has not specifically requested to observe prior to it's being covered, the Engineer may request to see such work and it shall be uncovered and replaced by Contractor. If such work is in accordance with the Contract Documents, the costs of uncovering and replacing the work shall be added to the contract sum by change order; and if the uncovering and replacing of the work extends the contract time, an appropriate adjustment of the contract time shall be made by change order. If such work is not in accordance with the Contract Documents, the Contractor shall pay such costs and shall not be entitled to an adjustment of the contract time or the contract sum.

Regular working hours for Town Construction Inspectors are between 7:30 a.m. and 4:00 p.m., Monday through Friday, excluding Town holidays. If the Contractor works outside these times, the Contractor may be charged for additional inspection. Inspection by the Engineer or by a Town inspector, or any order measurement, approved modifications, certificate or payment of money, or acceptance of any part of whole of the work, or any extension of time, or any possession by the Town or its agents, shall not operate as a waiver for any provision of this contract or of any power reserved therein to the Town, or any right to damage thereunder; no breach of this contract shall be held to a waiver of any or subsequent breach. All remedies shall be taken and construed as cumulative.

4.23 Testing - Unless otherwise stated in the Contract Documents, all required testing will either be performed directly by an independent laboratory coordinated and paid for by the Contractor. The Contractor shall submit the resulting certified test results and Certificates of Compliance for all materials requiring such as specified in the Technical Provision. Contractor shall cooperate with the Town in coordinating the necessary testing. The coordination of testing, including the number and location of tests, shall be under the direction of the Engineer. All compaction test sites deeper than five (5') feet below grade shall be properly shored by the Contractor to protect testing personnel.

The cost for performing re-tests due to failures, or additional call-outs if work is not ready to test, will be charged to the Contractor. The Town shall require retesting until all required tests are successfully passed.

SECTION 5 – CHANGES IN WORK

5.01 Limited Town Authority to Approve Change Orders - The Contractor recognizes that the Town is a public agency and that it can only act through its duly authorized agents. In this regard, the Contractor agrees that only written change orders, executed by the governing body of the Town, shall be valid. The Engineer shall have no authority to issue a change order unless so specifically authorized, and no person shall have authority to issue any oral change order.

5.02 Contractor Liability for Unapproved Change Orders - Unless a valid change order is issued, all changes in the work performed by the Contractor shall be at the Contractor's own risk, and shall not be entitled to any additional compensation. Furthermore, the Contractor may be required to make the work conform to the plans and specifications. No act or series of acts by the Town during the course of the contract shall be deemed to constitute a waiver of the Town's right to rely upon the provisions of this Section 5, "Changes in Work".

5.03 Non-Material Change Requests by the Contractor - Changes in the plans and specifications requested in writing by the Contractor, which do not materially affect the work and which are not detrimental to the work or to the interests of the Town, may be granted to facilitate the work, when approved in writing by the Engineer. If such changes are granted, they shall be made at a reduction in cost or at no additional cost to the Town. Nothing herein shall be construed as granting a right to the Contractor to demand acceptance of such changes or to increase the contract sum or contract time as a result of the proposed change.

5.04 Effect of Extension of Time - The granting of any extension of time due to delays which, in the judgment of the Town, are unavoidable delays shall in no way operate as a waiver on the part of the Town of his rights under this contract.

5.05 Letters of Instruction - The Engineer may issue letters of instruction in the form of Field Orders, Clarifications, responses to Requests for Information, or any other document which makes interpretations or clarifications to the Contract Documents that do not modify the scope of work or involve an adjustment in the contract sum or contract time. Letters of Instruction shall be binding upon the Contractor, and the Contractor shall promptly carry out the requirements of such Letters of Instruction.

5.06 Requests for Information, Inconsistencies and Changed Conditions - Before undertaking each part of the work, the Contractor shall carefully study all pertinent figures shown in the Contract Documents and verify that all applicable field measurements are free of conflicts, errors, discrepancies, inconsistencies and omissions. If such conditions are discovered, the Contractor shall notify the Engineer by writing a Request for Information, and await direction from the Engineer before proceeding.

If the Contractor encounters a changed condition, as defined by one or more of the conditions below, the Contractor shall notify the Engineer by writing a Request for Information before disturbing the condition further.

- (a) Material differing from that represented in the Contract which the Contractor believes may be hazardous waste, as defined by Health and Safety Code, Section 25117 that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provision of existing law; and
- (b) Subsurface or latent physical conditions at the site differing materially from those represented in the Contract Documents; and
- (c) Unknown physical conditions at the site of any unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the work and of the character provided for in the Contract Documents.

No extension of Contract time shall be made by the Town due to the Contractor's failure to provide a timely written notice of any inconsistency or changed condition requiring direction. The Engineer will

respond to the Contractor's Request for Information within three working days, providing an interpretation, clarification or change order for an appropriate adjustment in contract time and cost pursuant to General Provisions, Section 5.07, and "Change Orders". Contractor shall wait for the Engineer's written response to a Request for Information before proceeding with any work.

The Contractor shall not be liable to the Town for failure to report any conflict, error, or discrepancy in the Contract Documents, unless the Contractor had actual knowledge or could foresee such conditions as may be discovered by a reasonable examination of the work site or materials. If the Contractor performs any construction activity in which he knows or should know involves an error, inconsistency, ambiguity, or omission referred to in this Section, without notifying and obtaining the written consent of the Engineer, Contractor shall be responsible for the resultant costs, including, without limitation, the costs of correcting defective work. However, in an emergency affecting the safety of persons or property, the Contractor shall take all reasonably necessary precautions to prevent or minimize damage, injury, or loss.

5.07 Extra and Omitted Work - Whenever corrections, alterations or modifications of the work under this contract are ordered and approved by the Engineer and increase the amount of work to be done, such added work shall be known as Extra Work. When such corrections, alterations or modifications decrease the amount of work to be done, such deleted work shall be known as Omitted Work. The General and Special Provisions shall apply with equal force to all extra and omitted work.

When the contractor considers that any changes ordered involve extra or omitted work, he shall immediately notify the Engineer in writing and subsequently keep him informed as to when and where the alleged extra work is to be performed.

When extra work reports are agreed upon and signed by both parties, they shall become the basis of payment. When extra work is still under negotiation or has not been agreed upon, the Contractor shall keep daily detailed and accurate records itemizing each element of cost and shall provide certified payroll, invoices, and other substantiating records and documentation with records and/or claims for compensation to be provided no later than 30 days following the time in which the work claiming to be extra was performed.

Unless notification of extra work is documented, and unless a complete statement of materials used and expenses incurred is furnished by the contractor, the contractor shall not be entitled to payment of such alleged extra work, and any future claims for compensation will be invalid.

Payment for extra work shall be in accordance with General Provisions, Section 5.08 - "Change Orders". Omitted work shall not constitute a claim for damages on account of anticipated profits on the work that may be omitted.

5.08 Change Orders – At any time during the progress of the work, and without in any way rendering void the Agreement, the Town may order alterations, additions or deductions from the work by change order, without notice to sureties. When so ordered in writing, the Contractor shall proceed with work as directed by the change order.

The change order shall describe the change in the work, the adjustment of the contract sum (if any), and the adjustment of the contract time (if any). The Contractor shall not be entitled to any extension of time for the completion of the work by virtue of any change order unless the change order specifically provides for this. If, after receiving a change order, the Contractor feels that he is entitled to an extension of time, he may, within five (5) working days file a written claim to that effect for consideration by the Engineer.

The process of submitting a proposed change, a cost proposal, or negotiating an agreed upon change order, or any failure to reach an agreement as to an adjustment in the contract sum or the contract time, shall not relieve the Contractor of his obligation to perform in accordance with the Contract Documents.

A change order may be in the form of a Town directed change order or an agreed upon change order. Upon the receipt of either form of change order, the Contractor shall proceed promptly and diligently with the extra work.

- (a) *Town Directed Change Orders* - A Town directed change order may be issued by the Town without the Contractor's signature where the Town determines that it is in the Town's best interest to proceed with the work, and the change does not materially alter the character of the work. The Contractor shall be deemed to have accepted the terms of any Town directed change order unless the Contractor asserts a claim with respect to the change order, no later than ten (10) working days following the Contractor's receipt of the change order. See General Provisions, Section 5.09, "Disputed Work".
- (b) *Agreed Upon Change Orders* - Within five (5) working days after receiving a request from the Town for a written proposal for an agreed upon Change Order, the Contractor shall provide the Engineer with a cost proposal in a form satisfactory to the Engineer, setting forth the Contractor's proposed adjustments to the contract sum and contract time for performing the extra work.

Compensation for agreed upon change orders shall be calculated based upon the unit prices stated in the Bid Schedule and no additional markup for overhead or profit will be provided unless stated otherwise as follows. If there are no unit prices for the extra work, the Contractor and the Town may agree upon unit prices or lump sum costs, which shall be used to increase or decrease the contract sum. In the absence of any such agreement, the contract sum shall be adjusted by Force Account.

1. *Quantity Adjustments* - Unit prices shall govern not only for alterations to work covered by written specifications and drawings, but also for other work incidental or necessary to completing the work for which written specifications and drawings may be later prepared. Whenever an item of work or materials is specified in the contract by unit price and is changed by less than twenty-five percent (25%) of the Engineer's estimated quantity for that item of work as specified in the Bid Schedule, then the contract sum shall be increased or decreased by the application of the unit price so specified. Whenever an item of work exceeds twenty-five percent (25%) of the Engineer's estimated quantity, the Town reserves the right to renegotiate with the Contractor for the unit price associated with that bid item. This renegotiated price shall apply to only the amount in excess of twenty-five percent (25%). If the Town decides not to renegotiate, or a renegotiated price cannot be reached by the Contractor and the Town, then the payment for this item shall be adjusted by Force Account.
2. *Agreed Upon Price* – If there are no unit prices for proposed extra work, the Contractor and the Town may agree upon unit prices or lump sum costs, by written change order, prior to commencing work. In the absence of any such agreement, the contract sum shall be adjusted by Force Account.
3. *Force Account* - When extra work is to be paid on a force account basis, the labor, materials and equipment used in the performance of that work shall be paid in accordance with the 2010 State Standard Specification, Section 9-1.04 "Force Account." To the total of the direct costs computed, there can be an added markup of up to thirty-five percent (35%) to the cost of labor, up to fifteen-percent (15%) to the cost of materials and up to fifteen-percent (15%) to the cost of equipment. These markups shall constitute full compensation for any and all overhead costs, profit, or other costs not specifically designated as a cost of labor, material or equipment. When subcontractors perform force account work, an additional ten-percent (10%) markup shall be added to the total cost of the extra work to reimburse the Contractor for additional administrative costs. No markup for any Subcontractor beyond the first tier shall be paid.

During the performance of extra work by Force Account, and as a condition to the Contractor's right to an adjustment of the contract sum, the Contractor shall prepare daily reports itemizing all costs for labor, materials, and equipment rental and provide certified payrolls. For labor costs, the reports shall include names, job classifications, hours worked and rates of pay. For equipment costs, the reports shall include size, type, identification number and hours of operation. All records and reports shall be submitted to the Engineer for approval on a daily basis.

Reports shall be made on the State of California, Daily Extra Work Report Form or on a similar form approved by the Engineer.

- i. *Labor* - Labor costs shall be based on the prevailing wage scale for each craft or type of workman, and no compensation shall be allowed for payment in excess of the prevailing wage. Employer payments for payroll taxes and insurance, health and welfare, pension, vacation, and other direct labor costs shall be included and will be calculated as the Labor Surcharge stipulated in the *State of California, Labor Surcharge and Equipment Rental Rates* book.
- ii. *Materials* - Materials cost shall be the cost of all materials purchased by the Contractor and used in the extra work and shall be the actual cost of such materials, including sales taxes, freight and delivery charges. The Town reserves the right to reject materials to be furnished by the Contractor, sources of supply or, if necessary, to furnish the materials to the Contractor. No compensation will be paid to the Contractor for any material furnished by the Town or for materials not used.
- iii. *Equipment Rental* - The Contractor will be allowed the actual rental rate of equipment, prorated over the time the machinery or equipment is required. For Contractor owned equipment, this rate shall be as stipulated in the *State of California, Labor Surcharge and Equipment Rental Rates* book. In addition, the Contractor will be allowed reasonable move-in and move-out charges, if applicable. All equipment shall, in the opinion of the Engineer, be in good working order, good condition, and suitable for its purpose. Equipment or tools having a replacement value of \$200.00 or less, whether or not consumed by use, shall be considered small tools and no payment will be made therefore.
- iv. *Other Services or Expenditures* - The Town may authorize and approve payment for work performed by special forces or necessary services and expenditures other than labor, materials, and equipment rental.

5.09 Disputed Work - When the Engineer and Contractor fail to agree as to whether an alteration ordered by the Engineer constitutes a material change or difference in the character of the work, or fail to agree upon the compensation to be allowed for such altered work, the Contractor shall proceed with the altered work and file with the Engineer, within ten (10) working days after receiving direction from the Engineer, a written protest detailing the particulars of the dispute and the amount of additional compensation or time required for the alteration. Failure of the Engineer to recognize a change in the character of work when ordering alterations shall in no way be construed as relieving the Contractor of the Contractor's duty and responsibility for filing a protest as prescribed above. The Town will not consider additional compensation for altered work unless the Contractor files a written protest within ten (10) working days after receiving direction from the Engineer.

If the Contractor has complied with the notification requirements of this sub-section, consideration of payment due shall be made as later determined through claim resolution procedures as set forth in General Provisions, Section 10, "Measurement and Payment".

Although not to be considered as approval for proceeding under extra work provisions, the Contractor shall keep and furnish records of disputed work in accordance with General Provisions, Section 5.07, "Extra Work".

SECTION 6 - CONTROL OF MATERIALS

6.01 Materials and Workmanship - All materials, parts and equipment furnished by the Contractor in the work shall be new, high grade, and free from defects. Workmanship shall be in accordance with generally accepted standards. Materials and workmanship shall be subject to the Engineer's approval.

Materials and workmanship not conforming to the requirements of these specifications shall be considered defective and will be subject to rejection. Defective work or material, whether in place or not, shall be removed immediately from the site by the Contractor, at his expense, when so directed by the Engineer.

If the Contractor fails to replace any defective or damaged work or material after notice from the Engineer, the Engineer may cause such work or materials to be replaced. The replacement expense shall be deducted from the amount to be paid to the Contractor.

Used or secondhand materials, parts and equipment are permissible only if permitted by the Special Provisions.

Specialized material or equipment to be used in the work that is not readily available from material suppliers (such as electroliers, luminaries, signal poles, heads, cable, controllers, pumps, etc.) shall be ordered within five (5) days after award of the contract. Time extensions will not be granted for project delays due to the unavailability of such specialized material and equipment unless the Contractor furnishes the Engineer with documentation of purchase order dates, acceptable reason for delay of delivery, or proof of diligent efforts to obtain said items from alternate sources.

The Contractor shall provide the Engineer with periodic reports to inform the Engineer of any changes in the projected material or equipment delivery dates.

6.02 Protection of Work and Materials - The Contractor shall provide and maintain storage facilities and employ such measures as will preserve the specified quality and fitness of materials to be used in the work. Stored materials shall be reasonably accessible for inspection. The Contractor shall also adequately protect new and existing work and equipment for the duration of his contract.

The Contractor shall not, without the Town's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the contract.

6.03 Trade Names or Equals - Whenever any particular material, process, or equipment is indicated by patent, proprietary or brand name, or by name of a manufacturer, such wording is used for the purpose of facilitating its description and shall be deemed to be followed by the words "or equal". Because products specified may have a uniqueness that can't be matched, the Contractor must "bid" the work based upon the products specified. If, during the submittal process, an equivalent product is proposed by the contractor, the contractor must provide data to show that the product is considered equal. Contractor shall also identify any price differences, which shall be considered as part of the substitution and if accepted, shall result in an appropriate credit or cost to the Town by change order should the substitution be made.

Unless otherwise authorized by the Engineer, the offer must be submitted in sufficient time, before the normal use or installation of the material, process or equipment, for the Engineer to determine the equivalency and for the Contractor to make any required purchases (including delivery).

The Contractor shall, at his expense furnish data concerning items offered by him as equivalent to those specified. The Contractor shall have the material tested as required by the Engineer to determine that the quality, strength, physical, chemical, or other characteristics, including durability, finish, efficiency, dimensions, service, and suitability are such that the item will fulfill its intended function. Installation and use of a proposed item shall not occur until after approval by the Engineer.

Test methods shall be submitted for approval by the Engineer prior to the test being performed on an item proposed for substitution. Test results shall be reported promptly to the Engineer, who will evaluate the results and determine if the proposed item is equivalent. The Engineer shall determine whether the material offered is equivalent to that specified, and the Engineer's findings shall be final. If a substitute offered by the Contractor is found to be not equal to the specified material, the Contractor shall furnish and install the specified material.

The specified contract completion time shall not be affected by any circumstances developing from the provisions of this Section.

6.04 Inspection of Materials by Town - Unless otherwise specified, inspection may be required at the source for such typical materials and fabricated items as bituminous paving mixtures, structural concrete, metal fabrication, metal casting, welding, concrete pipe manufacture, protective coating application, and similar shop or plant operations.

Standard items of equipment such as electric motors, conveyers, elevators, plumbing fixtures, etc., are subject to inspection at the job site. Special items of equipment such as designed electrical panel boards, large pumps, sewage plant equipment, etc., are subject to inspection at the source, normally only for performance testing. The Special Provisions may specify additional inspection requirements.

6.05 Inspection of Materials by Others - When the Town does not elect to make its own inspection at the source, the Town may, at its expense, engage an inspector or accredited testing laboratory to inspect the materials, equipment or process. The inspector or representative of the testing laboratory shall judge the materials by the requirements of the plans and specifications. No materials or equipment shall be shipped nor any processing, fabrication or treatment of such materials shall be done without a favorable inspection by the engaged agent. These materials shall be subject to re-inspection at the job-site.

6.06 Tests of Materials - Before incorporation into the work, the Contractor shall submit samples of materials, as the Engineer may require, at no cost to the Town. The Contractor, at his own expense, shall deliver the materials for testing to the place, and at the time designated, by the Engineer. Unless otherwise provided by the Special Provisions, all testing shall be performed under the direction of the Engineer, and at no expense to the Contractor.

The Contractor shall notify the Town in writing at least fifteen (15) days in advance of his intention to use materials for which tests are specified, to allow sufficient time for the Town to perform the tests. The notice shall name the proposed supplier and source of material.

6.07 Certification - The Engineer may waive material testing requirements of the Specifications and accept the manufacturer's written Certificate of Compliance or test data demonstrating that the materials to be supplied meet the requirements of the specifications. A Certificate of Compliance is acceptable for authorizing the use of steel pipe in sizes less than eighteen (18) inches and vitrified clay, cast iron or ductile iron pipe in all sizes. All materials used on the basis of a Certificate of Compliance may be sampled or tested by the Town at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of the responsibility for incorporating materials in the work which conforms to the requirements of the Contract Documents.

6.08 Weighing and Metering Equipment - All scales and metering equipment used for proportioning materials shall be inspected for accuracy and certified within the past twelve (12) months by the State of California Bureau of Weights and Measures, by the County Director or Sealer of Weights and Measures, or by a scale mechanic registered with or licensed by the County,

The accuracy of the work by a scale service agency, except as stated herein, shall meet the standards of the California Business and Professions Code and the California Code of Regulations pertaining to weighing devices. A certificate of compliance shall be presented to the Engineer for approval prior to operation, and shall be renewed whenever required by the Engineer at no cost to the Town.

All scales shall be arranged so they may be read easily from the operator's platform or area. They shall indicate the true net weight without the application of any factor. The figures of the scales shall be

clearly legible. Scales shall be accurate to within one-percent (1%) when tested with the plant shut down. Weighing equipment shall be so insulated against vibration or moving of other operating equipment in the plant area such that the error in weighing with the entire plant running will not exceed two-percent (2%) for any setting nor one and one half percent (1.5%) for any batch.

6.09 Calibration of Testing Equipment – Testing equipment, such as but not limited to, pressure gages, metering devices, hydraulic systems, force (load) measuring instruments, and strain-measuring devices shall be calibrated by a testing agency acceptable to the Engineer at intervals not to exceed twelve (12) months, and following repairs, modification, or relocation of the equipment. Calibration certificates shall be provided when requested by the Engineer.

SECTION 7 – UTILITIES

7.01 Town's Statutory Obligation - Pursuant to Government Code, Section 4215: "in any contract to which a public agency as defined in Section 4401 is a party, the public agency shall assume the responsibility, between the parties to the contract, for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the site of any construction project that is the subject of the contract, if such utilities are not identified by the public agency in the plans and specifications made a part of the invitation for bids. The contract documents shall include provisions to compensate the Contractor for the costs of location, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the project necessarily idled during such work. The Contract documents shall include provisions that the Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of the public agency or the owner of the utility to provide for removal or relocation of such utility facilities."

7.02 Contractor's Obligation to Identify and Protect Subsurface Infrastructure - The Contractor shall locate and protect service laterals, conduits, and appurtenances of any underground facility, the presence of which could be reasonably inferred from the Contract Documents or from the presence of visible facilities such as buildings, meters, and junction boxes, prior to doing any work that may damage any such facilities, or interfere with their service. Where underground main distribution conduits, such as water, gas, sewer, electric power, telephone, or cable television are shown on the plans, the Contractor shall assume that every parcel will be served by a service connection for each type of utility. The Contractor shall comply with all requirements for the protection of underground infrastructure as set forth in Government Code, Sections 4215 through 4216.9.

It shall be the Contractor's responsibility to complete all work in a manner that satisfies utility company standards, providing if requested, detailed plans prepared by a California Registered Civil Engineer showing necessary temporary support of utilities during coordinated construction work. The Contractor is directed to contact these agencies before submitting bids and to be familiar with their requirements and shall include all costs of this coordination within the proposals bid prices.

The Contractor agrees to assume liability and to hold the Town of Loomis, its officers, and employees harmless from any damages resulting from the existence of underground utilities and structures not reported to the Engineer, not indicated on the public records examined, or located at variance with that reported or shown on records examined.

7.03 Location - The Town will search known records and indicate on the plans those utilities, except service connections, which may affect the work. All available information regarding removal, relocation, or disconnection of utilities, or installation of new utilities, will be furnished to prospective bidders before the receipt of bids. The Contractor shall immediately report to the Engineer those utilities omitted from the plans or found substantially at variance with the location shown.

Existing and proposed utilities and improvements are shown in their approximate locations. Locations may not have been field verified and no guarantee is made as to the accuracy and completeness of the information shown. The fact that any facility is not shown on the plans shall not relieve the Contractor of his responsibility under this Section. It shall be the Contractor's responsibility to determine the existence and location of utilities shown on the plans, indicated by field locating services, or evidenced by facilities visible in the field. No additional compensation will be allowed for delays incurred as a result of the Contractor's failure to field verify and/or pothole existing utilities prior to beginning construction. Potholing shall be considered as part of the various contract bid items and no additional compensation will be allowed.

At least three (3) working days prior to commencing work, the Contractor shall request that utility and agencies mark or otherwise indicate the location of their substructures. Contractor shall contact Underground Service Alert (USA) at (800) 642-2444 and the Engineer at least forty-eight (48) hours prior to excavation. The location of utilities as shown on the plans are approximate and are not to be construed as certainty. It shall be the Contractor's responsibility to determine the true location and depth of all utilities and service connections affecting or conflicting with the work, prior to the performance of the work. As necessary, the Contractor shall pothole these utilities prior to working in the area to avoid damage to them.

Potholing shall be considered as part of the contract bid items, and no separate payment will be made. Contractor shall familiarize himself with the type, material, age and condition of any utility which may be affected by the work.

7.04 Protection - As necessary or as directed by the Engineer, the Contractor shall field adjust proposed improvements to avoid conflicts with existing improvements. The Contractor shall not interrupt the service function or disturb the supporting base of any utility, without authority from the utility Owner or order from the Town.

Where protection is required to ensure support of existing underground, overhead and at-grade utilities (including their associated structures and service connections) as shown on the plans, the Contractor shall furnish and place the necessary protection at his expense. In case of damage, the Contractor, without additional compensation, shall restore utilities to as good of a condition as they were found.

Upon learning of the existence and location of any utility omitted from or shown incorrectly on the plans, the Contractor shall notify the Town and be fully responsible for protecting such utility. When authorized by the Engineer, additional protection may be paid by change order, for utilities other than a service connection.

The Contractor shall immediately notify the Engineer and the utility owner if he disturbs, disconnects or damages any utility. If the utility is located substantially as indicated on the plans, the Contractor shall bear the costs of repair or replacement.

When placing concrete around or contiguous to any utility, the Contractor shall at his expense, furnish and install a cushion of expansion joint material, clear opening, sleeve, or other suitable material approved by the Engineer so as to prevent embedment or bonding of the utility with the concrete.

7.05 Shut Down Notification – The Town is in-charge of the traffic signal and street lighting systems, and as such, the Contractor shall coordinate shut downs of these facilities with the Town's Public Works Maintenance Department. The Contractor shall also coordinate the shutdown of all other utilities, including, but not limited to water, sewer, electricity, gas, communications, or CATV with the corresponding utility owner.

Shut downs of any utility or other facility, when allowed, shall be done only after:

- A. The Contractor has coordinated with and notify the Engineer/Utility Owners in writing, at least seventy-two (72) hours in advance of the shut down, and,
- B. Has properly notified customers (residents, businesses/agencies) emergency response staff, and,
- C. Has all materials required for the work at the job site prior to requesting a shut off.

Except for scheduled shutdowns and in cases of emergency, the Contractor shall notify all customers and effected parties of a shutdown at least forty-eight (48) hours in advance by writing and four (4) hours in advance by person to allow adequate draw time. Once shut down, the Contractor shall proceed with the work in an expedient manner until the water lines or sewer lines are back in service.

7.06 Removal - Unless otherwise specified, the Contractor shall remove all portions of interfering utilities shown on the plans as 'abandoned' or "to be abandoned in place". Before starting removal operations, the Contractor shall ascertain from the utility Owner whether abandonment is complete. The costs involved in the removal and disposal of utilities to be abandoned shall be considered as part of the contract bid items, and no separate payment will be made.

7.07 Relocation - When feasible, the utilities within the area affected by the work will complete their necessary installations, relocations, repairs, or replacements before commencement of work by the Contractor. When the Contract Documents or plans indicate that a utility is to be relocated, altered or constructed by others, the Town will conduct all negotiations with the utilities and the work will be done at no cost to the Contractor.

Utilities interfering with the permanent project work, discovered after the award of the contract, shall either be relocated, altered, or reconstructed by the utility, or the Engineer may order changes in the work to avoid interference. Such changes will be paid for in accordance with General Provisions, Section 5, "Changes in Work".

When the plans or specifications provide for the Contractor to alter, relocate, or reconstruct a utility, all costs for such work shall be absorbed in the contract bid items. Temporary or permanent relocation or alteration of utilities by the Contractor for his own convenience shall be his responsibility, and he shall make all arrangements, obtain all approvals, and bear all costs. The Contractor may, for his own convenience or to expedite the work, agree with the owner of any utility to disconnect and reconnect interfering service connections. The Town shall not be involved in any such agreement.

7.08 Delays - The Contractor is responsible for notifying utility companies in time to prevent delays attributable to utility relocations or alterations as called for in the Contract Documents. The Contractor shall not be entitled to damages or additional payment if such delay does occur. The Engineer will determine the extent of the delay based on the Baseline Construction Schedule (Section 8.05) and on the project as a whole, and any commensurate extension of time.

7.09 Cooperation - When necessary, the Contractor shall conduct his operations so as to permit access to the worksite and provide time for utility work to be accomplished during the progress of the contract work.

SECTION 8 – PROSECUTION AND PROGRESS

8.01 Notice to Proceed - Within twenty-one (21) calendar days following receipt of the signed agreement, bonds and insurance, the Town shall issue the Contractor a Notice to Proceed provided that the documents are acceptable to the Town. Unless stated otherwise, the contract time shall commence upon the receipt date on the Notice to Proceed.

8.02 Commencement of Work - Work shall commence within fifteen (15) calendar days following the receipt date on the Notice to Proceed, and shall be diligently prosecuted to completion within the time provided in the Notice to Bidders.

8.03 Subcontracting - Unless otherwise indicated by the Special Provisions, the Contractor shall perform the majority of the project work.

8.04 Administrative Duties - The Contractor shall coordinate the scheduling and timing of administrative duties with other activities to avoid conflicts and to ensure orderly project progress. Such activities include, but shall not be limited to, the preparation of construction schedules, preparation and processing of submittals, requests for information and responding to requests for quotations, attending and preparing for progress meetings and coordinating project closeout activities.

8.05 Baseline Construction Schedule – Within ten (10) calendar days of the Notice to Proceed, the Contractor shall submit to the Engineer an acceptable Critical Path Method (CPM) progress schedule showing the critical path for completing the various items of work within the number of contract days specified. The schedule shall show the order in which the Contractor proposes to carry out the major items of work and the dates on which he will start and finish the various items (including procurement of materials and equipment). If requested, the schedule shall be resource loaded to reflect person/crew hours and equipment loading for various construction activities in order for the Town to better evaluate the proposed schedule.

- (a) *Town Review of Schedule* – The Town may review and note exceptions to the Contractor's schedule, if it is not sufficiently detailed to clearly show the work to be completed during each month to assure the completion of the work within the project duration. The Contractor will be solely and exclusively responsible for resolving any exceptions, and the Town's review will not create any scheduling obligations of the Town. Any noted corrections to the schedule shall be addressed within five (5) working days.
- (b) *Update of Schedule* – After submission of a schedule to which the Town has taken no exceptions, the Contractor shall submit an updated schedule on a monthly basis or as otherwise specified by the Town until completion of the work. The updated schedule must show the "As Constructed" progress up to the date for which the schedule has been prepared and reflect any proposed changes in the method of operations, to achieve the project milestones within the required project duration.
- (c) *Float* – The schedule must show early and late completion dates for each task. The number of days between these dates will be designated as "float". The float will be assigned to the project and available for the Town, at the Engineer's discretion, to allocate the "float" to the Contractor as needed to complete the work in accordance with the agreement.
- (d) *Failure to Submit Schedule* – If the Contractor fails to submit a schedule within the time periods specified in this sub-section, or submits a schedule to which the Town has taken uncorrected exceptions, the Town may withhold payments to the Contractor until such schedule is submitted and/or corrected in accordance with the Contract Documents.

8.06 Three-Week Look Ahead Schedule - The Contractor is required to furnish to the Engineer, on a weekly basis at the project's progress meetings, a three-week look ahead schedule. The schedule must show planned activities in sufficient detail to allow proper monitoring of the planned construction activities.

8.07 Construction Sequence - The Contractor shall prepare and submit at the pre-construction meeting a staging or phasing plan identifying the sequence of construction work and traffic control needed to complete the project. The staging plan shall be subject to review and approval by the Engineer, prior to the start of construction. The goal of the phasing plan will be to minimize impacts to surrounding businesses and residents in the project areas. When required by the Special Provisions or plans, the Contractor shall follow the sequence of operations as set forth therein.

8.08 Recording Existing Conditions - Existing conditions throughout the project site shall be photographed and/or videotaped by the Contractor before starting construction. Recording shall include and show every detail of existing improvements, including the current condition of the curb, gutter, sidewalk, signs, landscaping, streetlights, structures near the project including face of buildings, canopies, shades, fences and any other features within the limits of work. Photos and/or videotape shall be delivered to the Engineer at the pre-construction meeting.

8.09 Preconstruction Conference - The Town shall designate a date and time for the pre-construction conference once the contract has been fully executed. At the pre-construction conference, the Town shall discuss various administrative procedures and project coordination issues. At a minimum, the Contractor should be prepared to furnish and discuss the following:

- (a) Letter designating the Superintendent.
- (b) A list of key personnel and emergency contact information including telephone numbers to be used in case of emergency
- (c) Sequence or phasing plans identifying the phasing of construction work and any alternative sequences for consideration.
- (d) Traffic control plans associated with the staging plans (to be signed and stamped by a Licensed Traffic Engineer).
- (e) A draft of the master Baseline Construction Schedule, in Critical Path Method (CPM) format (to be finalized no later than ten (10) days after the Notice to Proceed).
- (f) A breakdown of lump sum bid items to be used as a basis for determining the value of work completed on future progress payments.
- (g) A submittal schedule listing all project submittals that will need to be reviewed and a listing of proposed material suppliers.
- (h) Utility company coordination and/or permit issues.
- (i) Videotape and/or photography of the project's existing condition (to be completed prior to starting construction).
- (j) Anticipated cash flow projections, if requested by the engineer.

8.10 Progress Meeting - The Contractor, Job Superintendent and Subcontractors, if requested by the Town, shall attend weekly progress meetings to be scheduled by the Engineer at a time agreeable to both the Engineer and the Contractor. Contractor shall also attend special meetings in addition to regular progress meetings if necessary and directed by the Engineer.

8.11 Hours of Construction - Construction activities shall be limited to the hours of 8:00 a.m. to 6:00 p.m., unless otherwise noted or further restricted in the Contract Documents, or as directed by the Engineer. No work shall be done on weekends, holidays or outside these specified hours, unless otherwise approved by the Engineer. The Contractor shall take into consideration and coordinate time constraints for special events or activities organized by the Town or other agencies. No mechanical equipment, including hauling or deliveries by trucks, shall start before 8:00 a.m. and all equipment must shut down before 6:00 p.m. unless approved by the Engineer.

8.12 Prosecution of Work - To minimize public inconvenience and possible hazards and to restore the streets and other work areas to their original condition and former state of usefulness as soon as practicable, the Contractor shall diligently prosecute the work to completion. If, in the Engineer's opinion the Contractor fails to prosecute the work to the extent that the above purposes are not being accomplished, the Contractor shall, upon orders from the Engineer, immediately take the steps necessary to fully

accomplish said purposes. All costs for prosecuting the work as described herein shall be absorbed in the Contractor's bid. Should the Contractor fail to take the necessary steps to fully accomplish said purposes, after orders of the Engineer to do so, the Engineer may suspend the work in whole or in part, until the Contractor takes said steps. With or without such suspension, the Engineer may cause such steps to be taken by force account or by other means at the Contractors expense.

8.13 Suspension of Work - Work may be stopped or suspended in whole or in part for up to ninety (90) days when, in the Engineer's opinion, the suspension is necessary and in the interest of the Town. The Contractor shall immediately comply with any written order of the Engineer suspending work. Such Town directed suspension shall be without liability to the Contractor on the part of the Town. Suspended work shall be resumed upon written order of the Engineer. An extension of contract time equal to the period of suspension shall be issued to the Contractor by change order. Any claim by the Contractor for an adjustment of the contract sum or the contract time shall be made within ten (10) working days after the end of the work suspension.

If work is suspended through any fault of the Contractor, all expenses and losses incurred by the Contractor during such suspensions shall be borne by the Contractor. If the Contractor fails to properly provide for public safety, traffic, and protection of the work during periods of suspension, the Town may elect to do so, and shall deduct the cost thereof from monies due the Contractor. Such action will not relieve the Contractor from any liability.

8.14 Default by the Contractor and Termination of Control - As a result of any of the following events, the Contractor shall be deemed to be in default:

- (a) If the Contractor is in bankruptcy or makes a general assignment for the benefit of creditors, or
- (b) If the Contractor fails to make prompt payment to subcontractors for labor or materials, or
- (c) If a receiver is appointed on account of the Contractor's insolvency, or
- (d) If the Contractor fails to provide enough properly skilled workmen or enough materials to insure compliance with the construction time schedule, or
- (e) If the Contractor fails to perform any portion of the work within the timing requirements of the Contract Documents, or abandons the project site, or
- (f) If the Contractor disregards instructions from the Engineer or violates any provision of the contract, or
- (g) If the Contractor fails to replace or repair any damage caused by the Contractor or its agents, representatives, contractors, subcontractors, or employees in connection with the performance of the work, or
- (h) If the Contractor violates any legal requirement related to the work.

In case of default, the Town may give written notice to the Contractor and the Contractor's bonding agent that if the default is not remedied within ten (10) calendar days or the Contractor does not provide adequate written assurance to the satisfaction of the Engineer that the cure will be forthcoming, the Contractor's control over the work may be terminated as of the date specified in the written notice.

Upon such termination of control the Town may enter upon and take possession of the entire work and may also take possession, for the purpose of completing the work, of all of the Contractor's tools, equipment and appliances upon the work, and all materials on the site or stored off-site for incorporation into the work. The Town may, at its sole option and without further notice to anyone, complete the work by day labor, by contract entered into by negotiations, by competitive bidding, by calling upon the performance of the performance bond surety, or by other means as the Town, in its discretion, shall elect.

After termination of the Contractor's control over the work as herein provided, the Contractor shall not be entitled to any further payments under the contract until the entire work thereunder has been fully completed and finally accepted by the Town. After such completion and acceptance, if the "unpaid balance of the contract price" (as defined in the next paragraph) exceeds the sum of the amounts expended by the Town in taking over and completing the work, including all managerial and administrative expense incurred

by the Town on account thereof and the amount of all damages incurred by the Town by reason of the Contractor's default, such excess shall be paid to the Contractor. If the said amount expended exceeds the unpaid balance, the Contractor and his surety shall be liable to the Town for the difference. At the Contractor's request, the expense incurred by the Town in taking over and completing the work, and the amount of any damage incurred by the Town by reason of the Contractor's default shall be audited and certified by an independent third party, whose certificate thereof shall be binding and conclusive upon the parties.

For the purposes of the computations required by the paragraph above, the "unpaid balance of the contract price" shall be the original contract price as adjusted by any change orders issued prior to termination of the Contractor's control, less all payments made on account thereof prior to such termination, and less any and all amounts withheld or paid pursuant to stop notices filed with the Town upon claims of subcontractors or others from equipment, labor or materials furnished to the work on behalf of the Contractor.

Upon completion and acceptance of the work, the Contractor shall be entitled to the return of all materials not used in the work, but without claim against the Town for loss or damage with respect thereto, and shall be entitled to the return of all his equipment, tools and appliances taken possession of by the Town, but without claim against the Town for any charge for the use thereof or for usual and ordinary depreciation and wear and tear.

The exercise of remedies provided for in this sub-section, for default by the Contractor, shall be in addition to, and shall not be deemed a waiver by the Town of any other rights or remedies due the Town under the contract provisions, for default by the Contractor.

8.15 Contractor's Right to Stop Work or Terminate Contract – The Contractor may give written notice to the Engineer of intention to stop work or terminate the Agreement, or both if the work should be stopped by order of any court or other public authority, through no act, omission or fault of the Contractor or any Subcontractor, agent or employee of the Contractor, and such work stoppage under such order shall continue for thirty (30) consecutive days from the effective date of such order

If, after the Contractor provides notice to the Town of any of the above defaults, the Town does not remedy the default within ten (10) calendar days, the Contractor may stop work and may give the Town written notice of contract termination. The Contractor may then recover from the Town payment for all work executed to date and any loss sustained upon any equipment or materials procured for the work prior to the work stoppage. No compensation for loss of anticipated profits will be provided, however, on work not completed. The Contractor's right to recovery shall be subject, however, to the duty of the Contractor to mitigate all loss or damage so far as reasonably possible.

8.16 Town's Right to Terminate Contract – The Town may, at its option, terminate the Agreement, in whole or from time to time in part, at any time by giving notice to the Contractor. Upon such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the Contractor, the Town shall pay the Contractor in accordance with this sub-section. Upon termination, the obligations of the Contractor for portions of the work already performed shall continue.

- (a) Upon receipt of a Notice of Termination, the Contractor shall, unless the notice directs otherwise, do the following:
 - 1. Immediately discontinue the work to the extent specified in the notice.
 - 2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary to complete such portion of the work that are not to be discontinued.
 - 3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent that they relate to the performance of the discontinued portion of the work.

4. Thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect materials, plants, and equipment on the project site or in transit thereto.
- (b) Upon such termination, the Town shall pay to the Contractor as a sole and exclusive remedy for the termination, the sum of the following, and the Contractor will be entitled to no other compensation or damages, and expressly waives same:
1. The amount of the contract amount allocated to the portion of the work properly performed by the Contractor as of the date of termination, less sums previously paid to the Contractor, plus
 2. Previously unpaid costs of any items delivered to the project site which were fabricated for subsequent incorporation in the work, plus
 3. Any proven losses with respect to materials and equipment directly resulting from such termination, plus
 4. Reasonable demobilization costs in excess of what would have been incurred if work were not terminated, plus
 5. Reasonable costs for preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The Town may terminate the Agreement at its own discretion or when conditions encountered during the work make it impossible or impracticable to proceed, or when the Town is prevented from proceeding with the Agreement by act of God, by law, or by official action of a public authority.

8.17 Time of Completion and Days Charged - The Contractor shall diligently prosecute and fully complete the work within the number of calendar or working days set forth in the Notice inviting Sealed Proposals or shall be subject to liquidated damages. Time is of the essence in the performance of all obligations under the Contract Documents, and all timing requirements shall be strictly adhered to unless otherwise modified by the Town. See General Provisions, Sections 8.12, "Prosecution of Work", and 8.18, "Liquidated Damages".

Under a calendar day contract, Town observed holidays and inclement weather delays are to be anticipated and unless there is a deviation from what is customary for the time of year the project is under construction, no additional days will be granted. Every day, including holidays, Saturdays and Sundays shall be counted as a day charged under a calendar day contract.

Under a working day contract, the Contractor will be given credit for Town observed holidays and inclement weather delays, in accordance with the State Standard Specifications. Should the Contractor prepare to begin work at the regular starting time in the morning of any day on which inclement weather, or the conditions resulting from the weather prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least seventy-five percent (75%) of the normal labor and equipment force engaged in the current controlling operations for at least sixty percent (60%) of the total daily time being currently spent on the controlling operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter.

8.18 Liquidated Damages - The Town and the Contractor, by execution of the agreement, each agree that time is of the essence in the performance of the work, and that actual damages for inconvenience and loss from any delay in completion of the contract beyond the date provided in the Notice to Bidders is extremely difficult or impossible to determine.

The Town and the Contractor further agree, as specified in the Notice to Bidders, that liquidated damages shall be assessed for each and every calendar day required to complete the contract in excess of the contract time established for the project, and that the amount stated therein is a reasonable estimate of the amount of such damages. The Engineer may deduct any liquidated damages owed to the Town, as determined by the Engineer from any payments otherwise payable to the Contractor under this agreement.

Separate from the above-mentioned liquidated damages, the Contractor shall be responsible for paying all damages incurred by private businesses (residential, commercial or industrial), schools and hospitals due to non-completion of the project by the date specified.

Nothing contained herein shall limit the Town's rights or remedies against Contractor for any default other than failure to complete the work within the contract time. This provision for liquidated damages shall not be applicable nor act as a limitation upon the Town if the Contractor abandons the work. In such event, the Contractor shall be liable to the Town for all losses incurred.

The date of the Engineer's Certificate of Substantial Completion shall be the termination date, if applicable, of liquidated damages.

8.19 Delays and Extensions of Time

- (a) *Excusable Delays* - shall mean delays in the prosecution or completion of the work which result from causes beyond the control of the Contractor and Town and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor, suppliers, or any tier of the Contractor's subcontractors. Excusable Delays fall into the following categories:
1. Abnormal Delays – Excusable Delays caused by acts of god, fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and shortages of materials insofar as they prevent the Contractor from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical path activity.
 2. Weather Delays – Excusable Delays due to inclement weather conditions or the conditions resulting from weather prevent the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force engaged in the current critical activity item for a period of at least five (5) hours per day toward completion of the current critical path activity.
 3. Material Shortage Delays – Excusable Delays due to shortages of material, provided that the Contractor submits satisfactory proof to the Engineer. For the proof to be satisfactory, the Contractor must demonstrate that he has made every effort to obtain the materials from all known sources within reasonable reach of the proposed work. Only the physical shortage of material, caused by unusual circumstances, will be considered under these provisions as an excusable delay, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical price, unless it is shown to the satisfaction of the Engineer that such material was only available at exorbitant prices. A material shortage delay will not be considered for material ordered or delivered late or for material whose availability is affected by virtue of mishandled procurement. The above provisions shall apply equally to equipment to be installed in the work.
- (b) *Compensable Delays* - shall include delays that occur in the prosecution or completion of the work, through no fault of the Contractor which prevent the Contractor from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule due to the following causes:
1. Delays due solely to the actions and/or inactions of the Town.
 2. Delays due to changed conditions as defined in General Provisions, Section 5.05, "Requests for Information, Inconsistencies and Changed Conditions".
 3. Delays due to other Contractors employed by the Town who interfere with the Contractor's prosecution of the work as defined above.
- (c) *Inexcusable Delay* - means any delay in the completion of the work beyond the expiration of the contract time resulting from causes other than Excusable Delays or Compensable Delays. An Inexcusable Delay shall not entitle the Contractor to an extension of the

contract time or an adjustment of the contract sum. In addition to liquidated damages for inexcusable delays, the Contractor agrees to pay the Town's actual costs, including charges for engineering, inspection and administration incurred during the delay.

- (d) *Concurrent Delays* - those periods of delay when the prosecution of the work is delayed during the same period of time due to causes from a combination of the delays defined as Excusable, Compensable or Inexcusable.

If the Contractor desires an extension of time, he shall file a written request based upon the delays reported. The Engineer will ascertain the facts, the extent of the delays, and the effect upon the entire project, and the Town will grant an extension of time equivalent to verified time lost. The request for an extension of time must be made no later than ten (10) working days after the start of the condition that purportedly caused the delay, and no later than fifteen (15) working days after the date on which performance on the condition purportedly causing the delay has ended.

Contractor may make a delay claim for an extension of the contract time for an Excusable Delay or a Compensable Delay. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the contract time shall be the number of calendar days from the commencement of the first delay to the cessation of the delay which ends last. If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the contract time shall be the number of calendar days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Inexcusable Delay.

For a Compensable Delay, the Contractor may make a delay claim for an adjustment in the contract sum in an amount equal to the sum of the actual and unavoidable additional costs of labor, material, and equipment furnished at the site by the Contractor or subcontractors, including wages, salaries, fringe benefits and payroll taxes.

Extensions of time, when granted, will be based upon the effect of delays to the project as a whole and will not be granted for non-controlling delays to minor portions of the work unless it can be shown that such delays did, in fact, delay the progress of the project as a whole. For purposes of determining delays, all float associated with the project schedule shall belong to the project. See General Provisions, Section 8.05, "Baseline Construction Schedule".

If delays are caused by unforeseen events beyond the control of either the Contractor or the Town, such delays will entitle the Contractor to an extension of time as provided herein, but the Contractor shall not be entitled to damages or additional payment due to these delays. War, governmental regulations, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of work, other similar action of the elements, inability to obtain materials, equipment, or labor because of Federal Government restrictions arising out of National Defense, required extra work, action or inaction by the Town, or other specific reasons as may be further described in the specifications may constitute such a delay. If delays beyond the Contractor's control are caused by reasons other than those mentioned above, but are substantially equal in gravity to those enumerated, an extension of time may be granted, if deemed by the Engineer to be in the best interests of the Town.

The Contractor shall be entitled to an extension of time if delayed due to a failure of the Town to furnish necessary right-of-way or materials which the Town agreed to furnish, or by the Town's failure to supply necessary plans or instructions concerning the work, after written request by the Contractor.

For Compensable Delay periods resulting in indirect overhead expenses, the Contractor shall be reimbursed as provided for in General Provisions, Section 5, "Changes in Work".

8.20 Substantial Completion – When work in accordance with the Contract Documents has progressed to a stage of one-hundred percent (100%) complete, as determined by the Engineer, except for the completion of minor punch list items of deficiencies or omissions in the work which require correction in order to satisfy the agreement, yet do not impair the Town's ability to occupy and fully utilize the work for its intended purpose, the project shall be deemed "Substantially Complete". Portions of the work may also be designated by the Town as substantially complete if the Contract Documents require separate delivery.

When the Engineer determines that the work or such designated portions of the work are substantially complete, the Engineer will prepare and sign a Certificate of Substantial Completion. The date of substantial completion shall establish the date at which days charged against the project duration shall terminate. The date of substantial completion shall also establish the date of occupancy by the Town and the transfer of responsibility from the Contractor to the Town for such items as security, maintenance, heat, utilities, insurance, and damage to the work from causes other than that of the Contractor. Unless otherwise indicated in the Certificate of Substantial Completion, the Contractor's guarantee for the work shall commence upon the date of substantial completion. See General Provisions, Section 11.01, "Contractor's Guarantee".

8.21 Project Closeout - After the Contractor has received the Certificate of Substantial Completion and has only minor work remaining, project closeout may begin. The following items and procedures are required as part of the project close out process.

- (a) Following the completion of punch list items, the Contractor shall make a written request to the Town to conduct a final inspection. The written request shall be accompanied by a Certification that the work has been performed in accordance with the Contract Documents.
- (b) Within fourteen (14) days of receipt of the Contractor's Certificate of Completion, a final inspection will be scheduled and conducted by the Town. As a result of the inspection, the Town will advise the Contractor of any work that must be completed or corrected before Acceptance, in the form of a punch list.
- (c) The Town will conduct a re-inspection of the punch list items within when requested by the Contractor, in writing, with assurances that the punch list requirements have been met. Any charges by a Consulting Engineer/Architect hired by the Town to do repeat re-inspection of the punch list may be recovered from the Contractor.
- (d) The contractor shall provide a final payment request with lien releases (if applicable) in a format acceptable to the Town.
- (e) The as-built drawings and all record documents and shall be provided to the Town by the Contractor including but not limited to, equipment operation and maintenance manuals, copies of warranties, shop drawings, product data, etc. Record documents shall be properly identified and organized into binders.

8.22 Final Completion - After the Contractor has received the Certificate of Substantial Completion along with the punch list, and has completed the items identified as necessary for project closeout, the Engineer will make a determination as to if the work is fully completed and in accordance with the Contract Documents. If so, the Engineer will recommend final acceptance to the Town Council.

Should it become necessary, due to developed conditions, for the Town to occupy any portion of the work, or any part of any structure or equipment, before the contract is completed or accepted, such occupancy shall not constitute an acceptance of any part of the work, unless so stated in writing by the Town.

8.23 Final Acceptance – Final acceptance by the Engineer will be considered after the work has been fully completed. A Notice of Completion will be filed with the County Recorder once Final Acceptance has been made.

8.24 Risk of Loss - The Contractor shall be responsible for the charge, care and protection of the project and shall bear all risks of injury or damage to the work, materials or equipment delivered to the site, by any means including fire, earthquake, wind, storm or other action of the elements, vandalism, or loss by theft, from the date of Notice to Proceed to the date of the filing of the Notice of Completion by the Engineer. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work, and shall bear the entire expense thereof, except such injuries or damages that are caused by riot, insurrection, acts of the Federal or State Government, or a public enemy in time of war.

8.25 Use of Improvements During Construction - The Town reserves the right to take over and utilize all or part of any completed facility or appurtenance. Such action by the Town will not relieve the

Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use by public traffic, from the action of the elements or from any other cause attributable to the Contractor's operations or negligence. The Contractor will be required to restore such portions of the improvement before final acceptance. Nothing in this Section shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials.

SECTION 9 —RESPONSIBILITIES OF THE CONTRACTOR

9.01 Contractor's Responsibility for the Work - The Contractor shall supervise, coordinate, and direct the work using Contractor's best skill and attention. Contractor shall have control over and be solely responsible for construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the work in accordance with the terms of the Contract Documents until the completion and final acceptance of the work by the Town. The Contractor shall furnish and maintain in good condition all equipment and facilities as required for the proper execution and inspection of the work. Such equipment and facilities shall meet all requirements of applicable ordinances and laws.

The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections and repairs occasioned or rendered necessary by causes of any nature whatsoever, excepting only acts of God and none other, to all or any portions of the work, excepting as otherwise stipulated.

9.02 Contractor's Responsibility for Subcontracted Work - The Town will deal directly with, and make all payments to the Contractor only. The Contractor shall be responsible for the coordination of all trades, subcontractors, and suppliers engaged upon the work. Neither the Town nor the Engineer will undertake to settle any differences between the Contractor and his subcontractors.

All persons engaged in the work, including subcontractors, will be considered as employees of the Contractor. The Contractor will be held responsible for their work and shall be responsible to the Town for acts and omissions including those by their respective agents and employees.

When subcontracted work is not prosecuted in a manner satisfactory to the Engineer, the Contractor shall be notified to take corrective action within a specified time. If timely correction is not made, then upon receipt by the Contractor of written instructions from the Engineer, the Subcontractor shall be removed immediately from the work and shall not be reemployed.

9.03 Superintendent - The Contractor shall employ, and provide a written letter designating a superintendent and/or representative and all their contact information. The superintendent and/or representative shall be present on the job site whenever work is in progress to coordinate all work with the Town and neighboring property owners, and who shall be available by phone twenty-four (24) hours per day, seven (7) days a week up to the Final Acceptance of the work by the Town. A backup representative may also be provided. A joint venture shall designate only one Superintendent.

Town approval of the Superintendent is required prior to starting work. The Town reserves the right to request an appropriately qualified replacement of the Superintendent any time during construction of the project. Contractor shall provide the Engineer with the Superintendent's telephone number, along with an after-hours emergency contact number of a responsible person who shall correct hazardous situations, should they occur, during times other than the normal working hours.

Directions and information given to the Superintendent shall be considered as having the same effect as if delivered to the Contractor and the Superintendent shall have full authority to execute the same and to supply materials, tools and labor without delay, and who shall be the legally appointed representative of the contractor. Contractor shall be liable for the faithful observation of any instructions delivered to him or to his appointed representatives.

9.04 Character of Workers - Contractor shall provide competent, fully qualified personnel to perform the work and shall at all times maintain good discipline and order among its employees and Subcontractors. Any employed person or Subcontractor who is found to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable or who fails or refuses to perform his work properly and acceptably, shall be immediately removed from the work by the Contractor and shall not be reemployed. Such discharge shall not be the basis of any claim for compensation or damages against the Town of Loomis or any of its officers, employees or agents.

9.05 Laws to be Observed - The Contractor shall keep himself fully informed of, and at all times observe and comply with all Federal, State and County laws, including those of CAL-OSHA; all municipal ordinances and regulations of the Town of Loomis; and all orders and decrees of bodies having jurisdiction

over the work. The Contractor shall also cause all agents and employees engaged on the project to observe and comply with all such laws, and shall protect and indemnify the Town of Loomis and all officers, employees, and agents thereof connected with the work against any claim or liability arising from or based on the violation of any such law

- (a) *Non-Discrimination* – Attention is directed to Labor Code, Section 1735 which reads as follows: “No discrimination shall be made in the employment of persons upon public work because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex of such persons, except as provided in Government Code, Section 12940 and every Contractor for public works violating this Section is subject to all the penalties imposed for a violation of this chapter.”
- (b) *Alien Labor* - The Contractor shall forfeit as penalty to the Town of Loomis fifty dollars (\$50.00) for each alien with no permit to work in the United States of America (USA) knowingly employed in the contract, by him or by any Subcontractor under him upon any of the work herein mentioned, for each calendar day, or portion thereof, during which such alien is permitted or required to labor in violation of the provisions of the Labor Code and in particular Sections 1850 to 1854 thereof, inclusive.
- (a) *Hours of Labor* – Hours of labor shall be pursuant to Labor Code, Sections 1810. Pursuant to Labor Code, Sections 1813, Contractor shall forfeit to the Town, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of this Agreement by Contractor, or any Subcontractor in violation of the terms of this Section or in violation of the provision of any law of the State of California. Such forfeiture amounts may be deducted from the contract sum. Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each calendar day and each calendar week by each worker employed on the project, which record shall be kept open at all reasonable hours to the inspection of the Town, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.
- (d) *Prevailing Wage* – As identified in the Notice to Bidders, the work contemplated by this agreement is a public work subject to prevailing wages under California Labor Code, Sections 1720 et. seq. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the work is to be performed for each craft, classification, or type of worker required to perform the work. A schedule of the most recent general prevailing per diem wage rates made available to the Town will be on file at the Town’s principal facility office and will be made available to any interested party upon request. This prevailing wage rate schedule is provided by the Town for Bidder’s information only and is not guaranteed by the Town to be current. Contractor is obligated to verify all appropriate prevailing wage rates and pay those rates as required. By this reference the verified current schedule of prevailing wage rates is made part of the Contract Documents. Contractor shall pay not less than the prevailing per diem wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the work. Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the specified prevailing per diem wage rates to all workers employed by such Subcontractors in the execution of the work.

Contractor shall forfeit to the Town, as a penalty, no more than fifty-dollars (\$50.00) for each calendar day or portion thereof for each worker that is paid less than the specified prevailing per diem wage rates for the work or craft in which the worker is employed for any portion of the work done by Contractor or any Subcontractor in violation of the provisions of the Labor Code, and in particular Sections 1770 to 1781 thereof, inclusive. Such forfeiture amounts may be deducted from the contract sum. Contractor shall also pay to any worker who was paid less than the specified prevailing per diem wage rate for the work or craft for which the worker was employed for any portion of the work, for each calendar day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

The Town will not recognize any claim for additional compensation because of the payment by the Contractor for any wage rate in excess of prevailing wage rates set forth in the

Agreement, including payment in excess of the prevailing wage for extra work paid by force account. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the Contractor's bid and will not, under any circumstances be considered as the basis of a claim against the Town under the Agreement.

- (e) *Payroll Records* - Pursuant to Labor Code, Sections 1776, Contractor and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, 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 in connection with the work. All payroll records shall be certified as being true and correct by Contractor or Subcontractors keeping such records; and the payroll records shall be provided to the Town no later than three weeks after closing of payroll. Certified payroll shall also be made available for inspection upon request by the State of California Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
- (f) *Apprentice Program* - Attention is directed to State of California Labor Code, Sections 3095, 1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, Section 200, and the applicable Sections that follow. Responsibility for compliance with these requirements lies with the Contractor. To ensure compliance and complete understanding of the law requiring apprentices, and specifically the required ratio thereunder, Contractor or Subcontractors should, where some question exists, contact the Division of Apprenticeship Standards, 425 Golden Gate Avenue, 4th Floor, San Francisco, California, 94102 or one of its branch offices prior to commencement of the work. In the event Contractor willfully fails to comply with this Section, it will be considered in violation of the requirements of the Contract.

Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Contractor or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

- (g) *Safety Program* – the Contractor shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety and to all requirements as set forth in the State of California Construction Safety Orders (CAL-OSHA), and in particular, Article 3 of these Safety Orders, regarding Accident Prevention and safety meetings. Within ten (10) working days following the Notice of Award the Contractor shall provide a copy of the Contractor's Safety Plan. The price paid for the plan is included in the various contract items of work and no additional compensation will be made therefore.

9.06 Permits and Fees – Unless otherwise stated in the Special Provisions, the Contractor shall procure all permits, registrations and licenses, including a Town business registration, pay all charges and fees, and give all notices necessary for lawful prosecution of the work. All permits, registrations, licenses, and other authorizations shall be secured in sufficient time to prevent delays to the work. The Contractor shall comply with the provisions of said permits, licenses and other authorizations. The contractor shall submit satisfactory proof to the Town, prior to issuance of the Notice to Proceed, that such permits, registrations or licenses are and will be in effect throughout the entire life of this contract. The contractor shall keep all permits, registrations and licenses posted on the job site.

For Town Capital Improvement Construction Projects, the Contractor shall obtain a "No Fee" encroachment and/or building permit. Contractor shall coordinate through the Engineer to insure that all appropriate construction inspections occur.

9.07 Coordination and Cooperation - Construction work by utility companies or other Contractors may be needed or may be occurring simultaneously within or adjacent to the limits of work for this project. The Contractor shall coordinate and cooperate with all other Contractors and utility companies throughout the duration of this project to avoid delays and minimize interference and conflicts. Cooperation will be required in the arrangement for the storage of materials, and in the detailed execution of the work. It is the Contractor's responsibility to ascertain the nature of work by others, coordinate his work, and install, modify, and maintain traffic control as necessary to avoid interferences and delays on the construction activities. Failure of the Contractor to keep informed of the work progressing on the site and failure to give written

notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with his own work.

Where the work of one trade joins or is on the other's work, there shall be no lack of continuity or discrepancy when work is completed. In conforming one kind of work with another, marring or damaging other work will not be permitted. Should improper work of any trade be covered by another which results in damage or defects, the whole work affected shall be made good by the Contractor without expense to the Town.

The Town reserves the right to perform work or allow others to perform work, as necessary, within or adjacent to the limits of this project, at any time. If the Contractor or any of his Subcontractors or employees causes loss or damage to any separate Contractor on the work, the Contractor, by agreement or arbitration, if he deems it necessary, will settle any claim for such loss or damage. If such separate Contractor shall sue the Town, on account of any loss so sustained, the Town shall notify the Contractor, who shall indemnify and hold harmless the Town against any loss or damage arising therefrom, including the cost and expense of defending any such suit.

If any portions of the work specified herein are to be installed in any right-of-way owned by the State, County, Municipality, or other public entities or public utilities, it shall be incumbent upon the contractor to familiarize described above will necessarily be subject to their inspection and approval before acceptance of these portions of the work by the Engineer. Any costs for inspection by agents other than those of the Town shall be borne by the contractor. Where other agencies have jurisdiction over some portion of the work, and the requirements of the agencies are at variance with this specification, then that portion of the work shall be done in accordance with the requirements of the agency(ies).

The Contractor shall absorb in his bid all costs involved in coordinating his work with others. The Contractor will not be entitled to additional compensation from the Town for damages resulting from such simultaneous, collateral and essential work.

9.08 Use of Premises - The Contractor shall confine construction activities to the project limits; which shall consist of right-of-way, easements and/or property owned by the Town of Loomis. With prior approval of the Engineer, adjacent street right-of-way may also be utilized for day-to-day operations. Unless approved by the Engineer, no storage of materials and equipment will be allowed to remain within the right-of-way during non-working hours, on the weekends, or during holidays.

Each day, after the completion of construction operations, unless otherwise approved by the Engineer, the project limits shall be secured and made accessible to the public. All excess materials and equipment not protected by approved traffic control devices (such as k-rails) shall be relocated to a staging area or demobilized. Trench spoils shall be off-hauled daily and open excavations shall be protected with steel plates.

Personnel of Contractor and Subcontractors shall not occupy, live upon, or otherwise make use of the project site during any time that work is not being performed at the project site, except as otherwise provided for in the Contract Documents for issues such as site security.

9.09 Construction Staging and Field Office - If additional space beyond the construction limits is necessary for staging, the Contractor shall, at his own cost and initiative, make special arrangements with neighboring property Town(s) to secure a staging area for a field office and/or material and equipment storage. The staging area must be fenced, with screening, and shall be operated in a manner that minimizes the inconvenience to neighbors.

The Contractor is encouraged to negotiate side agreements with the property owners of such sites prior to submitting bids. Prior to occupying the staging area, the Contractor will be required to provide to the Engineer a copy of the agreement or temporary construction easement granted by the property owner. A written release from the property owners or Town, holding the Town harmless from liability, will also need to be provided. In addition to approval from the property owners, the Contractor may also need to secure a Use Permit from the Town's Planning Division.

9.10 Site Security - Contractor shall be responsible for the care and custody of work and the site, including all necessary security provisions, on a 24-hour per day basis throughout the entire term of the Agreement. The Contractor shall provide and maintain storage facilities and employ such measures as will preserve the specified quality and fitness of materials to be used in the work.

9.11 Construction Water – The Contractor is responsible for obtaining all water required for the project and shall work with, and obtain all permits from, the appropriate water purveyor prior to obtaining construction water. If hydrant water is to be used, the Contractor must first obtain a hydrant meter and pay all related expenses. Direct connections to hydrants without a meter are not allowed. If water trucks are used, they shall be installed with backflow prevention devices. The cost of water, including all associated fees, deposits or permits shall be incorporated into the various bid items and no separate payment shall be made. Water in the Town of Loomis is supplied by:

Placer County Water Agency
144 Ferguson Road
P.O. Box 6570
Auburn, CA 95604
M-F: 8 a.m. to 5:00 a.m.
Tel.: (530) 823-4850
customerservices@pcwa.net

9.12 Project Site Maintenance – All work identified in this section shall be considered as part of the contract bid items, and no separate payment will be made thereof.

- (a) *Disposal of Material* - Unless otherwise shown on the plans or specified herein, all excess materials and materials removed from existing improvements shall become the property of, and be disposed by the Contractor. The Contractor shall be responsible for all costs associated with disposing all excess materials in a safe and legal manner. No material shall be placed on private or public property without prior approval from the Town and the property owner. The Contractor shall not allow any refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed upon paved streets, into manholes or into the Town's storm drain system.

Contractor shall establish a system for daily collection and disposal of waste materials from construction areas and elsewhere on the site. Contractor shall handle waste materials that are hazardous, dangerous, or unsanitary separately from inert waste by containerizing appropriately. Burning or burying of waste materials on site will not be permitted.

All materials removed from the existing improvements, which in the opinion of the Engineer have salvage value, shall be delivered to the Town Corporation Yard at 1000 Bransten Road, Loomis, or at any other site designated by the Engineer within the Town and shall be considered as part of the contract bid items, with no separate payment will be made thereof.

- (b) *Cleanup and Dust Control* – at all times during construction, including weekends and holidays, and throughout all phases of construction, including work suspensions and until final acceptance of the project, the Contractor shall keep the work site clean and free from rubbish, debris, and prevent the formation of an airborne dust nuisance.

Materials and equipment shall be removed from the site as soon as they are no longer necessary. Upon completion of the work and before final inspection, the entire site shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance.

The Contractor shall abate dust nuisance by cleaning, sweeping, and sprinkling with water, those excavated areas of dirt or other materials which are prone to causing dust, within both the project site and the storage or staging area. If required or directed by the Engineer, the Contractor shall provide an approved water truck of large capacity with spraying capability and/or street sweeper.

The Contractor shall be required to apply water for dust control immediately during construction efforts and within one (1) hour after notification by the Engineer that an

airborne nuisance exists. If dust control is not adequate, in the opinion of the Engineer, the Engineer will have this work performed by others and will deduct such cost from the total contract price.

All hauling trucks or other construction vehicles leaving the site shall be cleaned of mud or dirt clinging to exterior body surfaces or wheel rims before traveling on Town streets outside the work limits. All trucks coming to or leaving the site with materials or loose debris shall be loaded in a manner, which will prevent the dropping of materials or debris on Town streets. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately.

When construction operations cause dirt to be deposited on public streets, the Contractor shall immediately remove such material. Streets shall be cleaned by street sweeping, rather than flushing, so as to prevent mud from entering the storm drain system.

Excess excavated material shall be removed from the site immediately. Sufficient material may remain for use as backfill if permitted by the specifications. Forms and form lumber shall be removed from the site as soon as practicable after stripping.

Failure of the Contractor to comply with the Engineer's cleanup orders may result in an order to suspend work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.

- (c) *Air Pollution Control* - The Contractor shall not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.
- (d) *Noise Control* - The Contractor shall make every reasonable effort to control noise generated as a result of construction to the satisfaction of the Engineer. Use of an air compressor, jackhammer or other loud, vibrating sound generating device shall be limited to operations between the hours of 8:00 a.m. and 6:00 p.m. Monday thru Friday and between 9:00 a.m. to 5:00 p.m. on Saturday and Sunday, unless otherwise authorized by the Engineer.
- (e) *Vermin Control* - At the time of acceptance, structures entirely constructed under the contract shall be free of rodents, insects, vermin and pests. Necessary extermination work shall be arranged and paid for by the Contractor as part of the contract work within the contract time and shall be performed by a licensed exterminator in accordance with requirements of governing authorities. The Contractor shall be liable for injury to persons or property and responsible for the elimination of offensive odors resulting from extermination operations.
- (f) *Sanitation* - The Contractor shall provide and maintain enclosed toilets for the use of employees engaged in the work. These accommodations shall be maintained in a neat and sanitary condition. They shall also comply with all applicable laws, ordinances and regulations pertaining to the public health and sanitation of dwellings and camps.
- (g) *Wastewater* - Wastewater systems shall not be interrupted. Should the Contractor disrupt existing sewer facilities, the Contractor shall immediately notify the Engineer, and the Contractor shall establish a plan, subject to the approval of the Town, to convey the sewage in closed conduits and disposed of it back into the sanitary sewer system. Sewage shall not be permitted to flow in trenches or be covered by backfill.
- (h) *Temporary Light, Power and Water* - The Contractor shall at his own expense furnish, install, maintain, and remove all temporary light, power, and water, including piping, wiring, lamps, and other equipment, necessary for the work. The Contractor shall not draw water from any water source, except to extinguish a fire, without first obtaining permission from the appropriate water utility company/agency.
- (i) *Storm Water Pollution Control* - All work shall conform to Provision C.3 and C.6 of the Countywide Municipal Storm Water Permit (MRP) and the National Pollutant Discharge Elimination System (NPDES) permit. The applicant shall implement all Placer Countywide Water Pollution Prevention Program (PCWPPP) measures and Best Management Practices (BMP's). Failure to comply with the approved construction BMP's will result in the issuance of correction notices, citations and/or a stop work order.

Contractor shall submit to the Town a Storm Water Pollution Prevention Plan (SWPPP) in compliance with all NPDES requirements, and constructing those facilities which may be required to provide prevention, control, and abatement of water pollution. SWPPP shall address how the Contractor will prevent materials specified above from being rinsed or washed into the storm drain system and which BMPs will be implemented for preventing sediment and pollutant discharges into the storm water system.

All construction efforts shall be conducted in a manner which prevents the release of hazardous material or hazardous waste into the soil or groundwater, and minimizes the discharge of pollutants into the storm drain system. No pollutants will be allowed to enter the storm drainage system. The Contractor shall be responsible for containing and removing any waste from the Contractor's construction operations using the appropriate BMP. The Contractor shall be responsible for cleaning catch basins of solid or liquid waste materials originating from the Contractor's operation before this material migrates further into the storm drain system. Violation of this provision shall cause the Town to issue a stop-work notice and take necessary action to require the Contractor to correct and comply with regulations. All costs related to the stop-work action and corrective work to come into compliance shall be fully borne by the Contractor.

Existing Drainage Conditions - If the work performed interferes with established drainage patterns, ample provisions shall be made by the Contractor to correct the interference. The Town may also direct the Contractor to take additional measures to be performed at the Contractor's expense.

Illicit Discharge - No dumping or discharge of construction materials, debris, and hazardous materials will be permitted into the Town's storm drainage system. In the event of any discharge, leakage, spill or emission of hazardous materials, Contractor shall promptly notify the Town and shall clean all affected property. The Contractor shall indemnify, hold harmless and defend the Town against all liability incurred as a result of any such discharge, leakage, spill or emission, regardless of whether such liability, cost or expense arises during or after the term of the permit.

9.13 Preservation of Property - The Contractor shall be responsible for the protection of public and private property adjacent to the work.

Due care shall be exercised to avoid damage to existing roadway improvements and facilities, adjacent property, roadside trees, lawn and shrubbery not designated for removal, pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water laterals, and any other improvements or facilities within or outside the limits of construction. As ordered and approved by the Engineer, the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition as good as when the Contractor entered upon the work, or as good as required by the Contract Documents.

Existing striping damaged during construction within and adjacent to the project site shall be replaced with thermoplastic. Partially damaged striping (such as what might occur trenching through a pavement legend), shall be replaced in their entirety.

Contractor shall preserve carefully bench marks, reference points, and stakes; in case of willful or careless destruction, he will be charged with the resulting expense of replacement and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

Any survey monuments that are damaged or removed as part of the construction shall be replaced by the Contractor and a Record of Survey, as required by State law, shall be filed by a licensed Land Surveyor at the Contractor's expense.

The fact that any such improvement or facility is not shown upon the plans shall not relieve the Contractor of his responsibility under this Section. It shall be the Contractor's responsibility to ascertain the

existence of any underground improvements or facilities indicated on the plans, indicated by locating services, or as evidenced by facilities visible in the field.

Contractor shall protect his work, supplies and materials from damage due to the nature of the work, the action of the elements, trespassers, or any cause whatsoever which is under his control, until the completion and acceptance of the work. Neither the Town nor any of the Town's agents assume any responsibility for collecting indemnity from any person(s) causing damage to the work of the contractor.

9.14 Protection of Buried Utilities – When the Contractor's attention is directed to the existence of pipes, cables, culverts, and other underground structures and improvements which may or may not be shown on the plans, it is the responsibility of the contractor to ascertain the exact location of such underground utilities in advance of any digging operations so that they shall not be disturbed or damaged by him during the progress of the work. All expenses of whatever nature arising from such disturbance or replacement or repair thereof shall be borne by the contractor.

If the location of pipelines being installed by the contractor under this contract conflicts with the location of existing pipelines, contractor shall so notify the Engineer in writing. The Engineer will ascertain the location of the existing utility in question and may at his discretion relocate the pipeline being installed for the convenience of the contractor. It shall not be construed that the Town or the Engineer is in any way required or obligated to locate or relocate pipelines to locations other than shown on the contract plans. If the Engineer relocates pipelines at the request of the contractor, the contractor shall bear all the expenses incurred in connection therewith.

9.15 Protection of Bridges - Contractor shall be responsible for any damage he may cause to bridges, culverts and road structures. He shall determine in advance the allowable safe load for each structure and, if necessary, provide special shoring and support at his expense.

9.16 Protection of Traffic Signal Facilities - The Contractor shall give at least seventy-two (72) hours advance notice to the Engineer before commencing any street work (such as pavement grinding or trenching) that may potentially damage any traffic signal detection loop wires or any other signal facility. This requirement is in addition to any Underground Services Alert notifications. The Town will then mark the underground traffic signal facilities.

The Contractor shall not proceed with any grinding, trenching or other underground work until it has been verified with the Inspector that signal facilities have been marked.

In the event that the Contractor's construction activities cause any failure of a traffic facility, it shall be repaired and be made fully operable within 24-hours of the damage occurring. In the event that such repair is not undertaken within this time limit, the Town may repair the facility at the Contractor's expense.

9.17 Restoration of Adjacent and Existing Improvements - Contractor shall do all cutting, fitting, or patching of the work required to make all parts of the work come together properly with existing and adjacent conditions.

Unless otherwise provided, the Contractor shall repair or replace all existing improvements (e.g., curbs, sidewalks, driveways, fences, signs, utilities, street surfaces, structures, etc.) damaged or removed as a result of his operations. Repairs and replacements shall be at least equal to existing improvements, and shall match in terms of condition, finish and dimension to the satisfaction of the Engineer.

All Underground Services Alert (USA) markings, including the initial markings made by the Contractor and those markings placed by others in response shall be removed at the Contractor's expense when they are no longer required. Acceptable means of removal include sand blasting, high pressure washing, or other means approved by the Engineer.

All traffic signs and street signs within the limit of work necessarily removed during the various phases of operations shall be temporarily reset by the Contractor at or near the original location upon completion of each phase of construction operations. Prior to removal of all traffic control signs, the Contractor shall submit photographs of the site which show the existing location of these signs so that upon

completion the photographs will aid in resetting the signs at or near their original location. Traffic control signs and street signs will be replaced upon completion of the work and the cost of removal and replacement shall be considered as part of the contract bid items, and no separate payment will be made thereof.

Rural type mail boxes shall be maintained by the Contractor in a manner satisfactory to the property owner and postal service, and the Contractor shall relocate the same as soon as possible to a permanent location in accordance with postal regulations and in a location acceptable to the property owner.

Any object to be removed and reused at other locations shall be removed with due care and delivered or stored at the project's construction storage area, or if approved by the Engineer, at any other site designated by the Engineer within the Town. Such objects may consist of street light poles, signal mast arms and other objects directed by the Engineer. Items not approved by the Engineer for reuse purposes, and without salvage value, shall become the property of the Contractor, to be disposed of at Contractor expense, in an acceptable manner.

9.18 Archeological Remains - If human and/or archeological remains are uncovered during excavation. All earthwork within one-hundred (100) feet of these materials will be stopped until a Coroner and/or professional archeologist (SCA) and/or the Society of Professional Archeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation measures.

9.19 Access to Private Property - The Contractor shall schedule and perform operations so as to minimize disruption of access to private property. Prior to blocking access to any private driveway or parking lot entrance, the Contractor shall notify the residents, business owners or tenants of pending closure and allow residents to remove vehicles. During non-working hours no driveway, house or parking lot shall be denied access to a public roadway.

The Contractor shall coordinate with the adjacent property owners and businesses and maintain vehicle and pedestrian access to their properties at all times. Temporary access ramps, fencing, or other measures shall be provided as needed.

9.20 Traffic Control and Public Convenience – The Contractor shall provide for safe movement of all vehicular, bicycle and pedestrian traffic through and around the construction operations with as little inconvenience and delay as possible. The Contractor shall have no amount of work under construction other than what he can properly prosecute with due regard to the rights and convenience of the public.

Proper conveyance of vehicular traffic and pedestrians through the work area depends upon navigating under unexpected situations. The means of clarifying such conditions to the public include the Contractor's use of signs, flagmen, pavement markings, barricades, lights, cones and delineators. No one standard sequence of signs or control devices will suit all conditions which may result from construction operations. Even for the same work, the conditions may vary from hour to hour, requiring adjustment and revisions of the traffic control in effect. The traffic control requirements specified herein are therefore intended to establish general principles to be observed in the control and regulation of traffic through and around the construction operations anticipated for this project. The requirements set forth in this Section represent the minimum traffic control requirements imposed and the Contractor shall be solely responsible for providing the full extent of traffic control measures that are necessary. Only individuals trained in the principles of implementing traffic control and/or traffic control flagging shall be assigned that responsibility at the work site.

- (a) *Traffic Control Plan* – The Contractor shall submit a Traffic Control Plan to clearly describe proposed traffic control measures. The plan shall be generally in accordance with the illustrations included in the "California Manual of Uniform Traffic Control Devices" and the "Work Area Traffic Control Handbook", (Building News Incorporated P.O. Box 3031, Terminal Annex, Los Angeles, CA 90051). The submittal shall consist of scaled drawings for each situation anticipated to be encountered, i.e., intersections, mid-block (each during working and non-working hours), etc. The drawings shall show signs, traffic control devices and flagmen as required.

The Traffic Control Plan shall be directed equally to the regulation and protection of non-vehicular traffic including pedestrians, bicyclists, joggers, skaters, skateboarders, etc. The Contractor shall provide for the protection and separation of non-vehicular traffic from

construction operations at all times. No work involving the implementation of traffic control shall begin until the Engineer has reviewed and has no exception to the traffic control plans. The Contractor may implement a revised Traffic Control Plan only with subsequent review with no exceptions by the Engineer.

- (b) *Traffic Control Devices* - Traffic control devices shall be provided in sufficient quantities and types as required to provide safe and adequate traffic control. During hours of darkness, approved lights and/or flares shall be included, in proper working order, to illuminate signs and hazards and alert approaching traffic. Barricades shall be furnished and maintained along all open trenches in contact with traffic. No work may begin on any day or at any time before traffic control devices have been placed, test driven and, if required, adjusted and revised. All traffic control devices shall be placed in accordance with the Manual of Uniform Traffic Control Devices and the Contractor's favorably reviewed traffic control plans. Locations of devices shall be adjusted to suit the conditions and circumstances of each detour situation. In all cases, signs shall be placed to most effectively convey their messages to approaching traffic.

The Contractor shall maintain all traffic control devices, at proper locations and in proper working order, at all times during construction operations and whenever a hazard resulting from Contractor's operations exists. The Contractor shall adjust and revise traffic control devices, placement, etc., to suit changing conditions around construction operations. Traffic control devices shall remain in place at all times, as required to alert approaching traffic of upcoming hazards. After hazards have been removed, all traffic control devices shall be removed. Temporary signs shall be removed or their messages covered.

Daily traffic control measures shall continue until cleanup activities have been satisfactorily completed and all of the Contractor's equipment has been removed from the traveled way.

- (c) *Traffic Control Detours* - The Contractor shall direct, divert and detour traffic through, around and adjacent to construction operations in accordance with the traffic control plans specified in the Contract Documents or in accordance with the Contractor's favorably reviewed traffic control plans.
1. *Field Review of Detours* - Immediately after traffic control devices have been placed, the detour shall be test driven by the Engineer or Inspector and the Contractor's Superintendent. The test drive shall include approaches to the detour from each possible direction, and traverse the full length of each detour route. The Contractor shall adjust and revise all traffic control devices as determined to be required by the test drive and the test drive shall be repeated, if determined necessary by the Engineer or Inspector. The Contractor shall provide additional traffic control devices as required to maintain the flow of traffic throughout construction operation.
 2. *Diverting Bicycle and Pedestrian Traffic* - Whenever construction operations obstruct the flow of bicycle and pedestrian traffic or present a hazard to bicycles and pedestrians, the Contractor shall take appropriate action to protect and separate bicycles and pedestrians from the work area. Such action may include placement of barricades between bicycles and pedestrians and the work areas, placement of warning signs, and provisions utilizing personnel as required to protect and maintain access for bicycles and pedestrians as conditions warrant.
 3. *Diverting Vehicular Traffic* - Whenever construction operations obstruct the flow of vehicular traffic or present a hazard to vehicles operating in the vicinity of construction operations, the Contractor shall take appropriate action to warn, detour and otherwise protect approaching drivers and vehicles.
 4. *Flagmen* - The Contractor shall employ flagmen as required for each specific detour and at all locations where barricades and warning signs cannot control the movement of traffic. A warning sign shall be placed ahead of the flagman reading: "Flagman Ahead." The distance between the sign and the flagman should be based on the average traffic speed, allowing approximately fifty (50) feet for each ten (10) miles per hour. During hours of darkness, flagman stations shall be illuminated such that the flagman will be clearly visible to approaching traffic.

Lights for illuminating the flagman station shall receive favorable review by the Engineer. The flagman shall wear a red or orange warning garment when flagging. Flagmen shall be provided with approved red flags or STOP/SLOW hand paddles, and two-way radios for communication. When flagging during hours of darkness, the flagman shall signal with a red light or flare and shall have a belt and suspender harness outside his garment fitted with reflectors or made from reflectorized cloth, unless the garment is well reflectorized in one of these ways.

5. Notice to Agencies - The Contractor shall notify the Engineer and all agencies having jurisdiction over the work, in writing, at least ninety-six (96) hours, excluding holidays and weekends, prior to instituting any lane closure or detour. At the end of each workday, the Contractor shall inform the Engineer, Police Department and Fire Departments of the status of all detours, lane restrictions, or road closures. The Contractor shall cooperate and coordinate with the various parties involved in the collection and removal of trash and garbage, the transit providers, the U.S. Postal Service, and others, as necessary, in order to maintain existing schedules and services.
 6. Emergency Vehicle Access Through Detours - During all detours and/or street closures the Contractor shall provide for the movement of emergency vehicles through the work area. It is essential that the Contractor's work and equipment does not impede emergency access.
 7. Night Detours - The Contractor shall not be permitted to maintain any lane closure or road closure during non-working hours without first obtaining written approval from the Engineer. During non-working hours the Contractor shall restore travel lanes to their original alignment and configuration by means of placing temporary asphalt pavement or bridging with steel plates. The Contractor shall place "ROUGH ROAD" signs conforming to the Manual of Uniform Traffic Control Devices at uneven temporary pavement or bridging locations. See General Provisions, Section 9.18 (b), "Trench Safety Requirements".
 8. Temporary Traffic Lanes – Temporary traffic lanes shall be at least ten (10) feet wide, or eleven (11) feet wide around curves. Provide an additional two (2) feet of clearance from curbs. The length of temporary lanes should be limited to the area under construction and the distance necessary to divert traffic.
- (d) *Parking Restrictions* - The Contractor shall post approved "No Parking" signs at all locations necessary to establish work areas and detour traffic. Signs shall read: "NO PARKING - CONSTRUCTION TOW-AWAY ZONE," show the actual day and hours of parking restriction and indicate the telephone number of the Town's Police Department or agency having jurisdiction. Signs shall be placed at least forty-eight (48) hours in advance of the restriction. The Engineer shall approve the location and duration of no parking limits and verify their placement. "No Parking" signs shall be removed when no work is under construction and must be reposted forty-eight (48) hours before the resumption of construction activities.

For any violation of "No Parking" signs by motorists, the Contractor shall contact and coordinate directly with the Town's Police Department for removal of vehicles in accordance with the California Vehicle Code. The Contractor shall also coordinate with the Police Department directly for enforcement and towing of parked vehicles.

9.21 Safety - The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work. The Contractor's responsibilities shall specifically provide for the safety of persons involved in the project, other persons who are affected by the performance of the work, the work in place, materials and equipment to be incorporated in the work, the project site, and adjoining property.

The services of the Town in conducting inspection or construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing, shoring or scaffolding, or safety measures, in, on, or near the construction site.

Safety vests and personal protection equipment shall be worn by the Contractor, all subcontractors and other personnel when working or present on the site. Hard hats shall be worn when working around earthmoving or any heavy construction equipment or during any overhead construction work.

Payment for performing all work necessary to provide safety measures shall be included in the bid items for which safety measures are required and no additional compensation will be made.

- (a) *Safety Orders* – The Contractor shall have at the work site, copies or suitable extracts of: Construction Safety Orders, Tunnel Safety Orders, and General Industry Safety Orders issued by the State Division of Industrial Safety. The Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.
- (b) *Trench Safety Requirement* - As required by California Labor Code, Section 6705 and in addition thereto, for any excavation of any trench or trenches five (5') feet or more in depth, the Contractor shall submit to the Engineer for review, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. Structural calculations prepared, stamped and signed by a Registered Engineer licensed to practice in the State of California shall accompany the plan to verify the structural safety and adequacy of the sheeting, shoring and bracing to be used on the project. No such plan shall allow any shoring, sloping or a protection system less effective than that required by the Construction Safety Orders of the State Division of Occupational Safety and Health.

The maximum length of open trench shall be three-hundred (300) feet or the distance that pipe can be installed in a single day as determined by the Engineer. Trenches shall be backfilled and covered with two (2) inches of cutback (in paved areas) or bridged with tack-welded steel plates at the end of each workday. Cutback shall be placed around plate edges to provide a smooth transition and to secure against displacement.

As soon as possible under the provisions of these specifications, the Contractor shall backfill all excavations and restore to usefulness all improvements that existed prior to the start of construction.

- (c) *Confined Space Entry Program (CSEP)* - Entry into permit-required confined spaces as defined in Section 5157, Title 8, California Code of Regulations (CCR) may be required as a part of the work. All manholes, tanks, vaults, pipelines, excavations, or other enclosed or partially enclosed spaces shall be considered permit-required confined spaces until the pre-entry procedures demonstrate otherwise. The Contractor shall be responsible for implementing, administering, and maintaining a confined space entry program (CSEP) in accordance with Sections 5156, 5157, 5158, Title 8, CCR and shall implement such a program prior to performing any work in a permit-required confined space. A copy of the permit shall be available at all times for review by the Contractor and Town personnel at the work site.

Prior to starting work, the Contractor shall prepare and submit its comprehensive CSEP to the Engineer. The CSEP shall address all potential physical and environmental hazards and contain procedures for safe entry into confined spaces, including, but not limited to the following:

1. Training of personnel
2. Purging and cleaning the space of materials and residue
3. Potential isolation and control of energy and material inflow
4. Controlled access to the space
5. Atmospheric testing of the space
6. Ventilation of the space
7. Special hazards consideration
8. Personal protective equipment

9. Rescue plan provisions

The Contractor's CSEP submittal shall also include the names of the Contractor's and Subcontractor's personnel assigned to the project who will have CSEP responsibilities, their CSEP training, their specific assignment and their responsibilities in carrying out the CSEP.

Payment for implementing, administering, and providing all equipment and personnel associated with the CSEP shall be included in the bid items for which the CSEP is required and no additional compensation will be made.

- (d) *Hazardous Conditions: Contractor's Responsibility for Precautions* - Contractor agrees that if, during the progress of the work, a hazardous condition is identified which involves a risk of bodily harm to any person or a risk of damage to any property, the Contractor will take such special precautions as shall be necessary to make the progress of the work safe under such condition. Conditions may result from, but are not limited to, the use of specified materials or equipment, the location of the work, the condition of the site, the kind or method of construction, or the manner in which any of the work is required to be done. The Contractor agrees to assume the sole responsibility for determining whether any such hazardous condition exists or will be created during the course of the work.
- (e) *Use of Explosives* – Explosives may be used only when authorized in writing by the Engineer, or as otherwise stated in the Specifications. Explosives shall be handled, used, and stored in accordance with all applicable regulations. No explosive material shall be transported to, stored or utilized on the site without written permission of Engineer. All blasting work and handling of explosives on the site shall be done only by qualified persons who possess a valid permit. The Engineer's approval of the use of explosives shall not relieve the Contractor from liability for claims caused by blasting operations.
- (f) *Special Hazardous Substances and Process* – Materials that contain hazardous substances or mixtures may be required on the work. A Material Safety Data Sheet as described in California Code of Regulations, Section 5194 shall be requested by the Contractor from the manufacturer of any hazardous products used and submitted to the Engineer.

Hazardous material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all manufacturer warnings and application instructions listed on the Material Safety Data Sheet and on the product container label. The Contractor shall notify the Engineer if a specified product cannot be used under safe conditions.

9.22 Patent Fees or Royalties - All fees, royalties or claims for any patented invention, article or method that may be used upon or in any manner connected with the work under this contract shall be included in the price bid for the work and the contractor and his sureties shall protect and hold the Town, together with all the Town's officers, agents, servants and employees, harmless against any and all demands made for such fees or claims brought or made by the holder of any invention or patent and, before the final payment is made on account of this contract, contractor shall, if requested by the Engineer, furnish acceptable proof of a proper release from all such fees or claims.

Should the contractor, his agents, servants or employees, or any of them, be enjoined from furnishing or using any invention, article, material or appliance supplied or required to be supplied or used under this contract, the contractor shall promptly substitute other articles, materials or appliances, in lieu thereof, of equal efficiency, quality, finish, suitability and market value and satisfactory in all respects to the Engineer. Or, in the event that the Engineers elects in lieu of such substitution to have supplies and to retain and use any such invention, article, material or appliance as may be required by the contract to be supplied – in that event, the contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary for the Town, the Town's officers, agents, servants and employees, or any of them to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the contractor neglect or refuse to make the substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then, in that event, the Engineer shall have the right to make such substitution or the Town may pay such royalties and

secure such licenses and charge the cost thereof against any monies due the contractor from the Town or recover the amount thereof from him and his sureties notwithstanding final payment under this contract may have been made.

9.23 Advertising - The names of the Contractor or Subcontractors, with their addresses and the designation of their particular specialties, may be displayed at the job site on removable signs only if written approval is received from the Engineer. Commercial advertising material shall not be attached to, or painted on the surfaces of, any buildings, fences, canopies, or barricades.

9.24 Antitrust Claims – Attention is directed to Public Contract Code, Section 7103.5 which provides: “In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Town all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec 15) or the Cartwright Act (Chapter 2, commencing with Section 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 subcontract. The assignment shall be made and become effective at the time the Town tenders final payment to the Contractor, without further acknowledgement by the parties.”

9.25 Audit and Examination of Records – The Town and entities and agencies designated by the Town, shall have access to, and the right to audit and examine at no additional cost, all of the Contractor's project related data including but not limited to, books, estimates, records, contracts, bid cost data, Subcontractor and supplier job cost data, change orders, correspondence, instructions, drawings, receipts, vouchers, purchase orders, notes, computations, daily logs, and memoranda relating to the work. Pursuant to Government Code, Section 8546.7, the Contractor shall preserve all such records and will be subject to examination and audit by the State Auditor, at the request of the Town, for a period of three (3) years after final payment under the Agreement.

9.26 Notice of Entrance - Before entering any private property the contractor shall give the owner, tenant and inspector a minimum of forty-eight (48) hours written notice.

9.27 Additional and Emergency Protection - Wherever, in the opinion of the Engineer, the contractor has not taken sufficient precautions for the safety of the public or the protection of the works to be constructed under this contract, or of adjacent structures or property which may be injured by processes of construction on account of such neglect, and whenever, in the opinion of the Engineer, an emergency shall arise and immediate actions shall be considered necessary in order to protect personal and property interest, whether public or private, then and in that event, the Engineer, with or without notice to the contractor, may provide suitable protection to the said interests by causing such work to be done and such material to be furnished as shall provide such protection as the Engineer may consider necessary and adequate.

The cost and expense of such work and material so furnished shall be borne by the contractor and if the same shall not be paid on presentation of the bills therefore, then such costs shall be deducted from any amounts due or to become due the contractor. The performance of such emergency work under the direction of the Engineer shall in no way relieve the contractor from any damages which may occur during or after precaution has been taken by the Engineer.

9.28 Placing Portions of Work in Service - Portions of the work may be placed in service as completed if desired by the Town. Contractor shall give proper access to the work for this purpose. Such use and operation shall not constitute an acceptance of the work and the work, and the contractor shall be liable for defects due to faulty construction until the entire work under the contract is finally accepted.

9.29 Rights-of-Way - The Town will provide all rights-of-way and easements in or beneath which pipes and other structures will be constructed by the contractor under this contract. If through the failure of the Town to acquire or clear title to rights-of-way, the contractor sustains loss which could not have been avoided by the judicious handling of forces and plant, there shall be paid to the contractor such amount as the Engineer may find to be a fair and reasonable compensation for such part of the contractor's actual loss as the Engineer deems unavoidable. Actual loss shall be understood to include no items other than necessary payments, idle time of men, idle time of equipment, cost of extra moving of equipment, and cost

of longer hauls, with no allowance in any case for overhead or profit. If performance of the contractor's work is delayed as a result of the failure of the Town to acquire or clear title to rights-of-way, a commensurate extension of time will be granted.

SECTION 10 - MEASUREMENT AND PAYMENT

10.01 Measurement of Quantities for Unit Price Work - Materials and items of work which are to be paid for on the basis of measurement shall be measured in accordance with the methods stipulated in the particular sections of the Contract Documents involved. Unless specifically stated otherwise in this contract, no extra measurement(s) according to local custom of any kind shall be allowed in measuring the work under this contract; only the length, area, solid contents, number, weight, or time in standard units, as the case may be, shall be considered as specified.

Unless otherwise specified, quantities of work shall be determined from measurements or dimensions in the horizontal planes. Stationing shall be along the street centerline, lengths of sanitary sewers, storm drains and water lines shall be measured as the horizontal distances from center to center of structures, rounded to the nearest foot, and lengths of all return radii and curb data shall be measured along the face of curb. Volumetric quantities shall be the product of the mean area of vertical or horizontal sections and the intervening horizontal or vertical dimensions. Measurements shall be in accordance with U.S. Standard Measures. A pound is an avoirdupois pound. A ton is two-thousand (2,000) pounds avoirdupois. The unit of liquid measure is the U.S. gallon.

When payment is to be made on the basis of weight, the weighing shall be done on certified platform scales or, when approved by the Engineer, on a completely automated weighing and recording system. The Contractor shall submit to the Engineer with duplicate licensed Weighmaster's certificates showing the actual net weights. The Town will accept the certificates as evidence of the weights delivered.

10.02 Bid Items - Should any bid item be eliminated in its entirety, payment will be made to the Contractor for actual costs incurred, in connection with such eliminated contract work, and for costs incurred prior to the date of the Engineer's written notification eliminating such work. The actual costs to be paid to the Contractor shall be computed in the same manner as if the work were to be paid on a force account basis. No compensation will be made to the Contractor, in any case, for loss of anticipated profits. Increased or decreased scope involving a change order will be paid as stipulated in the change order.

The estimated value of work performed, for lump sum bids or lump sum bid items will be determined from the schedule of values, to be prepared by the Contractor and presented at the preconstruction meeting. Elements of work on the schedule of values shall be separated into groupings appropriate for the project. The Technical Specifications may be used as a guide for establishing these groupings. Move-in costs, bond and insurance costs, and submittal preparation costs can be included in the schedule of values under a separate mobilization line item. This line item shall not exceed five-percent (5%) of the contract's value. Overhead and profit shall not be allowed as a line item, but shall be prorated over other items of work.

10.03 Bid Quantities - The quantities listed in the Bid Schedule for each bid item do not govern final payment. Payments to the Contractor will be made only for the actual quantities of contract items constructed in accordance with the plans and specifications. If upon completion of the construction, the actual quantities show either an increase or decrease from the quantities given in the bid schedule, the contract unit prices will still prevail.

Payment will not be made for materials wasted or disposed of in a manner not called for under the contract. This includes rejected material not unloaded from vehicles, material rejected after it has been placed and material placed outside of the plan lines. Unless otherwise provided, no payment will be made for materials delivered to the site but not incorporated in the work. Such quantities will not be included in the final pay quantities. No compensation will be allowed for the disposal of rejected or excess material.

When a bid item is noted as "Revocable" in the Bid Schedule, it may be deleted in its entirety or in part, or added to at the sole discretion of the Town. The "25% Rule" described in Section 5.08 (b)(1), "Unit Price Adjustments" shall not apply to revocable bid items. Furthermore, due to the potential for large discrepancies between the estimated quantity and actual quantity of work, any reference within the specifications to work scope that does not have a corresponding bid item and is to be paid "as part of other items of work" shall not be included for payment as part of a revocable bid item.

When the estimated quantity for a specific portion of work is designated on the Bid Schedule as a "Final Pay Quantity", the estimated quantity specified shall be the final quantity for which payment for such specified portion of the work will be made, regardless of the actual quantity constructed, unless the dimensions of said portions of the work shown on the plans are revised by the Engineer. If such dimensions are revised and such revisions result in an increase or decrease in the quantity of such work, the final quantity for payment will be revised by the amount represented by the change. The estimated quantity for any portion of the work designated as a Final Pay Quantity shall be considered as approximate only and no guarantee is made that the quantity, which can be determined by computations, based upon the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantities based upon computations do not equal the estimated quantities. Final pay quantities will be designated on the Bid Schedule with the letter (F) and shall only apply to the corresponding portions of work specifically designated on the plans. Any portion of work not designated as a final pay quantity will be measured and paid for as specified under other provisions of the Contract Documents.

10.04 Progress Payments – On or about the 25th day of each month may be designated as the date which would terminate each working month for the purpose of making progress payments.

The Contractor's request for a progress payment shall be submitted under cover of the Request for Progress Payment form approved by the Engineer. The Request for Progress Payment form shall be complete and properly executed by the contractor, and have, as attachments, the items listed on the form.

The Contractor shall, on the date established, prepare and submit a progress estimate to the Town for work accomplished during the previous working month, based on the various contract bid items and the unit bid prices. Invoices shall include amounts previously paid, itemized retention and any deductions or additions authorized by change order. Consultation with the Engineer may be necessary to determine the amount of work accomplished.

The first progress payment will not be made until the following submittals have been provided and accepted: list and schedule of submittals, Baseline Construction Schedule, schedule of values (if applicable), SWPPP. Subsequent progress payment requests will not be accepted unless accompanied by the progress payment cover letter, an updated baseline or revised schedule, a certification that the record drawings have been updated as of the date of the invoice.

Upon receipt of a progress payment request, the Town shall, within ten (10) working days, determine if the request is proper, and if disputed the Town will return the progress payment to the Contractor along with a written document setting forth the progress payment request's shortcomings. Following receipt of an undisputed and properly submitted progress payment request, the Town shall authorize payment within thirty (30) calendar days.

Contractor may request partial payment for materials delivered to the site but not yet incorporated into the work (materials on hand). To receive consideration for payment of materials on hand, the Contractor shall provide the Engineer with a list of such materials at least five (5) working days prior to submitting the monthly estimate of amount earned for work completed. At the Engineer's sole discretion, up to seventy-five-percent (75%) of the estimated value of materials on hand may be considered for payment, subject to the following:

- (a) Only materials which have received favorable review of shop drawings will qualify.
- (b) Eligible materials must be delivered and properly stored, protected, and maintained in a manner favorably reviewed by the Engineer, at the job site or at a bonded warehouse.
- (c) The Contractor's actual net cost for the materials must be supported by paid invoices to suppliers or other documentation requested by the Engineer.
- (d) Materials delivered to the site less than thirty (30) days prior to their scheduled incorporation in the work shall not qualify.
- (e) Partial payments for materials on hand shall not be deemed to be final payment for the material nor relieve the Contractor of his obligations under the Contract.
- (f) Partial payments for materials on hand shall be subject to retention.

From each progress estimate, five percent (5%) will be deducted and retained by the Town, and the remainder of the amount due, less the amount of all previous payment will be paid to the Contractor provided all work invoiced has been completed and approved by the Engineer.

The Engineer may withhold or nullify, the whole or any part of any payment to such extent as may be necessary to protect the Town from loss on account of any of the following:

- (a) Defective or vandalized work not remedied,
- (b) Damage to the Town or another Contractor,
- (c) Claims filed, or reasonable evidence indicating probable filing of claims,
- (d) Stop notices, or failure of the Contractor to make payments properly to subcontractors or laborers or suppliers, in which case 125% of the stop notice amount shall be withheld until a release form is received,
- (e) A reasonable doubt that the contract can be completed for the balance unpaid,
- (f) Reasonable evidence that the work will not be completed within the contract time and that the unpaid balance of the contract sum would not be adequate to cover the Town's liquidated damages assessed in accordance with the Agreement for the anticipated delay,
- (g) Failure of Contractor to maintain, update and submit record documents, schedules or other submittals as required by the Contract Documents,
- (h) Performance of work by Contractor without properly processed shop drawings;
- (i) Any other failure of Contractor to perform its obligations under the Contract Documents.

The Contractor may elect to receive one hundred percent (100%) of payments due under the contract from time to time, without retention of any portion of the payment by the Town, by depositing and maintaining securities of a value equivalent to the retention amount with the Town in accordance with the provisions of Public Contract Code, Section 22300. Such securities, if deposited by the Contractor, shall be valued by the Town's Administrative Services Director, whose decision on valuation of the securities shall be final.

Contractor warrants that, upon submittal of an application for payment, all work for which payment has been previously issued by the Town and received by the Contractor, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work.

The payment of progress payments by the Town shall not be construed as an absolute acceptance of the work done up to the time of such payments and shall not constitute acceptance of defective work.

10.05 Retentions - The Town shall retain five percent (5%) of the amount of each progress estimate, and the accumulation of said amounts so retained from the progressive payments to the extent unencumbered will be paid to the contractor in no less than thirty-five (35) days after the completion and acceptance by the Engineer and the Town of the work done.

Upon contractor's request, Town will make payment of funds withheld from progress payments pursuant to the requirements of Code Section 14402 if contractor deposits in escrow with the Town, or with a bank acceptable to the Town, securities eligible for the investment of State funds under Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

- (a) Contractor shall bear the expense of the Town and the escrow agent in connection with the escrow deposit made.
- (b) Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the contractor pursuant to this section.

- (c) Contractor shall enter into an escrow agreement satisfactory to the Town, which agreement shall include provisions governing inter alia:
 - 1. Amount of securities to be deposited.
 - 1. Providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited.
 - 2. Conversion to cash to provide funds to meet defaults to termination of the contractor's control over the work, stop notices filed pursuant to the law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract.
 - 3. Decrease in value of securities or deposit.
 - 4. Termination of the escrow upon completion of the contract.
- (d) Contractor shall obtain the written consent of the surety to such agreement.

10.06 Final Payment - The Town shall, prior to final acceptance, provide the Contractor with a copy of the final quantities for the various contract bid items and a summary of contract change orders for his review. All prior payments shall be subject to correction in determining the total contract sum. The Contractor shall reply promptly in writing, to indicate either his concurrence or an explanation of possible discrepancies in the total contract sum.

The project will not be submitted to the Town Council for acceptance until the Engineer and the Contractor concur with the totals of all quantities, costs, contract change orders and the total contract sum. Following concurrence, a semi-final payment will be made to the Contractor after deducting all previous payments and all amounts to be retained under the provisions of the contract. The retention payment shall be due and payable as a final payment after the expiration of thirty-five (35) days following the date of final acceptance of the work by the Town Council.

If within the time fixed by law, a properly executed notice to stop payment is filed with the Town, due to Contractor's failure to pay for labor or materials used in the work, all money due for such labor or materials will be withheld from payment to the Contractor in accordance with applicable laws.

If releases are required, the Contractor shall pay or cause to be paid to Subcontractors the amount stated in the conditional releases within five (5) days after receipt of the semi-final payment, and shall promptly thereafter furnish evidence of such payment to the Town.

The securities deposited by the Contractor will be released, providing that the following requirements of the contract have been fulfilled:

- (a) Satisfactory completion of all construction work and written acceptance of said work by the Town;
- (b) The submission by the Contractor to the Engineer of all required stop notice releases, submittals, written guarantees, warranties, operating manuals, and other project related documentation;
- (c) The return to the Engineer of all drawings and written specifications loaned to the Contractor during the construction period.
- (d) The submission by the Contractor to the Engineer of record documents and a set of red-lined drawings showing the revisions to the original set of drawings which reflect the actual construction of the project for preparation of "Record Drawings".

The Contractor agrees that the payment of the final amount due under the contract shall release the Town of Loomis from any and all claims or liability on account of all work performed under the contract, except those items previously made in writing and identified by the Contractor as unsettled. Release of the final payment by the Town shall not be construed as an acceptance of any defective work or acceptance of improper materials.

10.07 Acceptance - Contractor shall notify Engineer in writing of the completion of the work, whereupon the Engineer shall promptly satisfy them self by personal inspection as to the actual completion of the work in accordance with the terms of the contract. After receiving a written recommendation from the Engineer for acceptance of the work, Town shall accept or reject the work; stating, if the work is rejected, the requisite conditions for acceptance. When the Town accepts the work, they shall file a Notice of Completion with the County Recorder in the county where the work is located and shall promptly notify the contractor in writing of the recordation. Contractor warrants and guarantees that title to all work, materials and equipment accepted by the Town will pass to the Town free and clear of all liens, claims, security interests or encumbrances, and that no work, materials or equipment accepted will have been acquired by the contractor, or by any other person performing the work at the site or furnishing materials or equipment for the project, subject to an agreement under which an interest therein or encumbrances thereon is retained by the seller or otherwise imposed by contractor of such other person.

10.08 Compensation for Extra or Omitted Work – Compensation for extra or omitted work shall be in accordance with Section 5.08, Change Orders.

10.09 Compensation to Town for Extension of Time - In case the work called for under this contract is not completed within the time limit stipulated herein, the Town shall have the right, as provided hereinabove, to extend the time of completion thereof. If the time limit so be extended, the Town shall have the right to charge to the contractor and to deduct from the final payment for the work the actual cost to the Town of engineering, inspection, administration, legal and other overhead expenses which are directly chargeable to the extension of time. The cost of final surveys and preparation of the final estimate shall not be included in such charges.

10.10 Liquidated Damages for Delay - It is agreed by the parties to the contract that time is of the essence and that in case all the work is not completed before or upon the expiration of the time limit as set forth, damage will be sustained by the Town, and that it is and will be impractical to determine the actual amount of damage by reason of such delay, and it is, therefore, agreed that the contractor will pay to the Town the amount specified in special provisions of the contract per day for each and every calendar day delay beyond the time prescribed.

In addition, the Town shall have the right to charge to the contractor and to deduct from the final payment for the work the actual cost to the Town of engineering, inspection, administration and other overhead expenses which are directly chargeable to the contract and which accrue during the period of such delay, except that the cost of final surveys and preparation of the final estimate shall not be included in such charges.

10.11 Claims - The term "Claim" shall mean a written demand or assertion by the Contractor seeking, as a matter of asserted right, adjustment in the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, or determination of other disputes or matters in question between the Town and Contractor arising out of or related to the Contract Documents or the performance of the work, including claims alleging an error or omission.

A claim must be stated with specific Town, including identification of the event giving rise to claim, the date of the event, and the asserted effect on contract sum and contract time. The claim shall include adequate supporting data. Adequate supporting data for a claim for an adjustment of the contract time shall include scheduling data demonstrating the impact of the event on the completion of the work. Adequate supporting data for a claim for an adjustment of the contract sum shall include a detailed cost breakdown of the items allowed, isolating labor, material, and equipment costs, and providing detailed quantities and unit prices for changed work. If the exact amount of a claim is not ascertainable at the time such claim is made, the supporting data currently available shall be submitted. Supplemental data supporting the exact amount of the claim shall be submitted as soon as available.

Notwithstanding the making of any claim or the existence of any dispute regarding any claim, unless otherwise directed by the Engineer, the Contractor shall not cause any delay, cessation, or termination in the performance of the work, including portions of the work pertaining to a claim.

10.12 Time Limit on Claims - Contractor shall submit any and all claims, together with adequate supporting data to the Engineer as soon as possible but not later than ten (10) working days after

occurrence of the event giving rise to the claim, or the date the Contractor first recognized, or reasonably should have recognized, the condition giving rise to the claim, whichever is earlier. Contractor hereby expressly waives all claims not made within this time limit.

Contractor is expressly barred from asserting any claims of which the Contractor was aware, whether or not the exact amount of such claims was ascertainable, that is not submitted to the Engineer prior to the Contractor proceeding with the work.

10.13 Town Response to Claims - The Engineer shall promptly review claims. If additional supporting data is deemed necessary, the Engineer shall request such additional data within ten (10) working days after receipt of the claim. The Contractor shall furnish such additional data no later than ten (10) working days after receipt of the Town's request. The Engineer shall render a decision promptly, but in any event, within thirty (30) working days after the receipt of the claim or the receipt of additional supporting data. If the amount of the claim is in excess of \$50,000, the aforesaid thirty (30) working day period shall be sixty (60) working days. Failure of the Engineer to render a decision within the aforesaid thirty (30) or sixty (60) working day period shall be deemed a decision denying the claim and the last day of such period shall be the date of such decision. The decision of the Engineer shall be final and binding unless appealed in accordance with the General Provisions, Section 10.15, "Appeal of the Engineer's Decision".

10.14 Appeal of Engineer's Decision - If Contractor disputes the Engineer's decision of a claim, the Contractor shall, within thirty (30) calendar days of the decision, make a written appeal of the decision to the Engineer. The written appeal shall include all supporting data upon which the Contractor requests the Town to modify its decision, including all documentation transmitted between the Contractor and the Engineer on the underlying claim. The Engineer shall make a good faith effort to resolve the claim prior to final completion of the Project. In the event the claim is not resolved prior to final completion, the Contractor's claim shall be heard by the Director of Public Works prior to recommending final acceptance to the Town Council. The Contractor's administrative remedies under the Contract Documents shall be exhausted after the decision of the Director of Public Works is rendered. In case of disagreement with the decision of the Director of Public Works, the Contractor may pursue the resolution of the dispute by presenting a formal claim to the Town.

SECTION 11 - GUARANTY

11.01 Contractor's Guaranty - Prior to final acceptance, the Contractor shall warrant and guaranty to the Town that all work is in accordance with the Contract Documents and is not defective.

The guaranty shall be accompanied by a warranty bond for ten percent (10%) of the final contract sum, which shall warrant the quality of the work for a period of one (1) year after acceptance. The guaranty and warranty bond shall be in accordance with the Agreement Forms furnished in the Contract Documents.

11.02 Correction of Defective Work During the Guaranty Period - If within two (2) years after the date of Town Council acceptance, or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guaranty required by the Contract Documents, any work is found to be defective, the Contractor shall promptly without cost to the Town and in accordance with the Town's written instructions, either correct such defective work or if it has been rejected by the Town, remove it from the site and replace it with non-defective work.

If the Contractor does not promptly comply with the terms of such instructions within ten (10) working days after written demand by the Town, the Town may have the defective work corrected. The Town may also correct defective work immediately in cases of emergency where delay would cause serious risk of loss or damage. All direct, indirect and consequential costs of correcting defective work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be absorbed by the Contractor.

The Contractor shall remove from the Project site portions of the work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Contractor nor accepted by the Town. If Contractor fails to pay the costs of such removal within ten (10) working days after written demand, the Town may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. The Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which the Contractor is liable to the Town, including reasonable attorneys' fees and expenses and compensation for the Town's services and expenses.

The Town shall have the option, at its sole discretion and by notice to the Contractor, to accept defective work as defined in Section 4.18 – "Acceptance of Defective Work".

CONTRACT

At Loomis, California , this _____ day of _____, 2022, the TOWN OF LOOMIS, a municipal corporation, in Placer County, State of California, hereinafter called "TOWN" and _____ herein called "CONTRACTOR" hereby agrees:

1. That into this contract, as though fully set out herein, are incorporated the Notice Inviting Bids, Bid Proposal Forms, Technical Provisions, General Conditions, Work Scope Exhibits and such other writing as are incorporated in the foregoing, all as set forth in that document entitled **Request for Proposals for Tree Maintenance Services** dated **January 2022**.
2. That CONTRACTOR shall perform and be bound by all of the terms and conditions of this contract as above expanded, and in strict conformity therewith shall perform and complete in good and workmanlike manner the **Tree Maintenance Services**, in accordance with maps, plans and specifications on file in the office of the Town Engineer of the Town of Loomis.
3. That for such performances TOWN shall pay to CONTRACTOR the prices set forth in the accepted bid proposal, as shown within the Contract Book, at the time and in the manner set forth in the Contract Book. CONTRACTOR shall receive total compensation in an amount not to exceed _____ (**\$ _____**) based upon satisfactory completion, as measured by the bid items, in the quantities of actual work performed, and paid at the bid item unit prices. CONTRACTOR shall accept such payment in full satisfaction of all claims incident to such performances.
4. That in no case shall any department, board or officer in the TOWN be liable for any portion of the contract price nor shall TOWN or any department, board or officer thereof be liable for any of the work performed by said CONTRACTOR under this contract.
5. That, in accordance with the provisions of Section 1296 of the Code of Civil Procedure of the State of California, in any arbitration, whether agreed to or required by law to resolve a dispute relating to this contract, the arbitrator's award shall be supported by law and substantial evidence.
6. CONTRACTOR shall assume the defense of, and indemnify and hold harmless TOWN, its officers, employees, and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, resulting from the performance of the work, provided that such action, damage, claim, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of property, whether upon or off the work, including the loss of use thereof, and is caused in whole or in part by any negligent act or omission of the Contractor, subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not it is caused in part by a party indemnified hereunder.

Approved as to Form:

By: _____
Town Attorney, Town of Loomis

By: _____
Town Manager, Town of Loomis

Approved as to Sufficiency:

By: _____
Town Engineer, Town of Loomis

By: _____
Contractor

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that _____, as Principal, and _____, a corporation authorized to do business in the State of California and organized and existing under and by virtue of the laws of the State of _____ as Surety, are held and firmly bound unto the Town of Loomis, a municipal corporation of the County of Placer, the State of California, in the sum of _____ (\$ _____) for the faithful performance of a certain contract hereinafter referred to, to be paid to the Town of Loomis for the payment of which well and truly to be made, the said Principal and the said Surety hereby bind themselves and, all and singularly, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

Signed by us and dated this _____ day of _____ 2022.

WHEREAS, the said Principal has entered into the annexed contract with the Town of Loomis to perform and complete, in strict conformity herewith and in a good and workmanlike manner the **Tree Maintenance Services**, in accordance with maps, plans and specifications on file in the office of the Town Engineer of the Town of Loomis.

NOW, THEREFORE, the conditions of the above and foregoing obligations are such that:

If the said Principal shall faithfully perform the said contract, then the above obligation with respect to the faithful performance of said contract shall be void; otherwise to remain in full force and effect.

And that said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same 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 or to the work or to the specifications.

If case suit is brought upon this bond by the Town of Loomis, a reasonable attorney's fee, to be fixed by the court, shall be paid by Principal and Surety.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument the day and year first hereinabove written.

Approved as to Form:

By: _____
Town Attorney

By: _____
Principal (Contractor)

Approved:

By: _____
Town Manager

By: _____
Surety

LABOR AND MATERIALS BOND

KNOW ALL MEN BY THESE PRESENTS, that _____, as Principal, and _____, a corporation authorized to do business in the State of California and organized and existing under and by virtue of the laws of the State of _____ as Surety, are held and firmly bound unto the Town of Loomis, a municipal corporation of the County of Placer, the State of California, in the sum of _____ (\$ _____) for the benefit of laborers and material hereinafter designed to be paid to the Town of Loomis for the payment of which well and truly to be made, and said Principal and the said Surety hereby bind themselves and, all and singularly, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

Signed by us and dated this _____ day of _____, 2022.

WHEREAS, the said Principal has entered into the annexed contract with the Town of Loomis to perform and complete, in strict conformity therewith in a good and workmanlike manner the **Tree Maintenance Services**, in accordance with maps, plans and specifications on file in the office of the Town Engineer of the Town of Loomis.

NOW THEREFORE, the conditions of the above and foregoing obligations are such that: If said principal or his or her subcontractors, their heirs, executors, administrators, successors and assigns shall fail to pay for any materials, provisions, provender or other supplies or teams 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 for amounts due under the Unemployment Insurance Act with respect to such work or labor, then said Surety will pay the same in or to an amount not exceeding the amount hereinabove specified to be for the benefit of laborers and material, and also will pay, in case suit is brought upon this bond, such reasonable attorney's fee as shall be fixed by the Court, awarded and taxed as provided by law.

This bond, to the extent of the obligation herewith with respect to laborers and material, shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Division 3, Part 4, Title 15 of the Civil Code of the State of California, so as to give a right of action to them or their assigns in any suit brought upon this bond. And that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on the bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or the specifications. In case suit is brought upon this bond by the Town of Loomis, a reasonable attorney's fee, to be fixed by the Court, shall be paid by Principal and Surety.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument the day and year first hereinabove written.

Approved as to Form:

By: _____
Town Attorney

By: _____
Principal (Contractor)

Approved:

By: _____
Town Manager

By: _____
Surety

CERTIFICATE OF INSURANCE
General and Automobile Liability

The undersigned insurance company hereby certifies to the Town of Loomis, California that it has issued a policy of insurance bearing Policy No. _____ to _____ in connection with a certain as work of improvement generally described as the **Tree Maintenance Services**, being a certain general and automobile liability policy which names the Town of Loomis, its officers and employees as additional insured, and which insures said Town, officers and said work of improvement, including but not limited to, coverage for all work performed by, for or on behalf of _____ . Said policy of insurance provides coverage in the following minimum amounts and for the following periods:

COVERAGE	POLICY NO.	POLICY PERIOD	MINIMUM LIMITS OF LIABILITY
1) Bodily Injury			\$1,000,000 each person \$1,000,000 each occurrence
2) Property Damage			\$1,000,000 each person \$1,000,000 each occurrence

This policy provides: (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) that said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, returned receipt requested, has been given to the Town Clerk.

Insurance Company Address of Signatory:

Authorized Signature (sign)

Authorized Signature (type)

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer. Executed at _____, California, on the ___ day of _____, 2022.

Authorized Signatory (sign)

(type name)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public, this _____ day of _____, 2022.

(sign)

(type name)

*If this certificate is executed outside of California, it must be sworn to before a Notary Public.

FORM APPROVED: _____, 2022, by _____
TOWN OF LOOMIS

CERTIFICATE OF WORKER'S COMPENSATION INSURANCE

I, THE UNDERSIGNED, HEREBY CERTIFY that, at all times during the performance of any work under contract or agreement with the Town of Loomis (check one of the following):

_____ I will have in full force and effect Worker's Compensation Insurance pursuant to the attached Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said certificate shall state that there is in existence a valid policy Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give Town at least ten (10) days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

_____ I have in full force and effect and have attached hereto a certificate of Consent to Self-insure issued by the Director of Industrial Relations (an exact copy or duplicate thereof certified by the Director may be attached).

I declare under penalty of perjury that the foregoing is true and correct and executed on _____ at Loomis, California.

By: _____

Printed Name

Official Title

On behalf of: _____
Contractor

NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND MUST MEET THE REQUIREMENTS SET FORTH ABOVE.

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE DIRECTOR OF INDUSTRIAL RELATIONS.

(Not required for Maintenance Work)
CERTIFICATION AGREEING TO 1-YEAR GUARANTEE

~~We hereby guarantee the **Tree Maintenance Services** improvements which we propose to construct in the Town of Loomis for (1) year in accordance with the guarantee required in the specifications. We agree to repair or replace any or all such work, together with all or any other work which may be displaced in so doing, that may be proven defective in workmanship or material within the period from the date of acceptance (recording of the Notice of Completion) without expense whatsoever to the Town, excluding ordinary wear and tear and unusual abuse or neglect.~~

We shall provide a 1-year security of 10% of the total completion cost of the project at the time of final acceptance.

~~In the event of our failure to comply with the above mentioned conditions within ten (10) days time after being notified in writing, we collectively or separately do hereby authorize the Town to proceed to have the defects repaired and made good at our expense and will pay the costs and damages incurred immediately upon demand.~~

Signed: _____

Printed Name: _____

Contractor: _____

Dated: _____