

SECTION 00001  
TITLE PAGE

City of Sausalito

420 Litho St  
Sausalito, CA 94965

**PROJECT MANUAL**

FOR THE

Sausalito Harrison Park Renovation Project

Bid Date: September 13, 2012

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SECTION 00100  
ADVERTISEMENT TO BID

**NOTICE IS HEREBY GIVEN** that the City of Sausalito ("City"), California, acting through its City Council, hereinafter referred to as the City or City of Sausalito, will accept sealed bids for the award of the contract for the following public work:

Sausalito Public Restroom Construction Project  
City Hall  
Sausalito, Marin County, California

Each bid must conform to and be responsive to the contract documents and be submitted on a form furnished by the City of Sausalito. **The project scope is Renovation of Harrison Park Playground. Work will involve new grading and excavation, landscaping, installation of new paved surfaces, installation of new playground equipment, installation of new fencing around perimeter, including new gate, and other related improvements.** Bidding documents contain the full description of the Work.

**Bids due:** Sealed Bids will be received by the City of Sausalito at its office located at 420 Litho St, Sausalito, CA 94965 **no later than:**

**2:00 p.m. local time, on Thursday, September 13<sup>th</sup>, 2012.**

The primary contact for this project is Loren Umbertis, telephone 415-289-4113, and email: [lumbertis@ci.sausalito.ca.us](mailto:lumbertis@ci.sausalito.ca.us)

**Procurement of bidding documents:** With the exception of its website, the City of Sausalito will not be a distribution point for plans. Plans will be released as full sets only, no partial sets will be provided.

**A Pre-Bid Conference will be held at** the Harrison Park location located between the address 174 and 180 Harrison Avenue on Wednesday, August 29th, 2012 at 9:00 a.m

Bidders shall read and review the bid documents carefully, and shall familiarize themselves thoroughly with all requirements. Bid documents will be available for review at the pre-bid conference and job walk.

A bid bond or certified check in the amount of 10% of the bid is required. Within ten (10) days after issuance of the Notice to Proceed, the successful bidder shall furnish a Labor and Materials Payment Bond and Performance Bond, in an amount equal to 100% of the Contract amount. Bids shall not expire for a period of sixty (60) days from the bid date. Wage rates and restrictions on working days and times shall meet all requirements of the Labor Code of the State of California for public contract. The bidder may contact the Director of the Department of Industrial Relations, phone number (415) 703-4774, to obtain a schedule of the general prevailing wages applicable to the location and work to be done. The contractor and the contractor's subcontractor are responsible for compliance with the requirements of Section 1777.5 and 1777.6 of the Labor Code of the State of California regarding employment of apprentices.

The City of Sausalito will make a bid selection based on lowest responsible bidder meeting the minimum qualifications. If only one bid is received, the City of Sausalito reserves the right to negotiate with the responding contractor. If no bids are received, the City of Sausalito reserves the right to identify interested contractor(s) and negotiate directly without re-bidding.

The City of Sausalito is an equal opportunity employer.

**Published:** August 17, 2012

END OF SECTION

SECTION 00200

INSTRUCTIONS TO BIDDERS

Bids are requested for a general construction contract, or work described in general, as follows:

Public Restroom Construction Project

**RECEIPT OF BIDS.** Sealed Bids will be received by the City of Sausalito at their office (see paragraph 2 below) by 2:00 p.m. local time, on Thursday, **September 13th, 2012.** **All Bids will be time stamped to reflect their submittal time.**

2. CONTACT INFORMATION:

Mailing address:  
City of Sausalito  
Office of the City Clerk  
c/o Debbie pagliaro  
420 Litho St  
Sausalito, CA 94965

Contact for Project Information:  
Loren Umbertis, Division Manager, Public Works  
lumbertis@ci.sausalito.ca.us

Telephone:  
(415) 289-4113

3. **BID SUBMISSION.** Bidder should mark its Bid envelopes as "BID FOR THE CITY OF SAUSALITO PUBLIC RESTROOM CONSTRUCTION PROJECT." Bids shall be deemed to include the written responses of the Bidder to any questions or requests for information of City of Sausalito made as part of Bid prior to submission of Bid. Bidder's failure to submit all required documents strictly as required entitles City of Sausalito to reject the Bid as non-responsive.

4. **CONTENTS OF ENVELOPE A – BID PROPOSAL:** Envelope A shall include the following:  
SECTION 00400 (Bid Proposal) completed in accordance with paragraph 6 of this Section 00200.

5. **CONTENTS OF ENVELOPE B – BIDDER QUALIFICATIONS.** Envelope "B" shall include:  
SECTION 00200 Bid security supplied and completed in accordance with paragraph 7 of this Section 00200.  
SECTION 00430 (Subcontractors List) in accordance with paragraph 8 of this Section 00200 and Section 00430 (Subcontractors List).  
SECTION 00460 (Schedule of Major Equipment and Material Suppliers). Bidder must complete this form as indicated.  
SECTION 00481 (Non-collusion Affidavit).  
SECTION 00485 (Key Personnel)

6. **REQUIRED BID FORMS.** All Bidders must submit Bids using, where applicable, documents supplied in this Project Manual, including without limitation

- Section 00400 (Bid Proposal)

- Section 00430 (Subcontractors List)
- Section 00460 (Schedule of Major Equipment and Material Suppliers)
- Section 00481 (Non-collusion Affidavit)
- Section 00485 (Key Personnel)

The City of Sausalito will reject as non-responsive any Bid not submitted on the required forms. Bids must be full and complete. Bidders must complete all Bid items and supply all information required by Bidding Sections. City of Sausalito reserves the right in its sole discretion to reject any Bid as non-responsive as a result of any error or omission in the Bid. Bidders may not modify the Bid Form or qualify their Bids. Bidders must submit clearly and distinctly written Bids. Bidders must clearly make any changes in their Bids by crossing out original entries, entering new entries, and initialing new entries. City of Sausalito reserves the right to reject any Bid not clearly written.

**7. REQUIRED BID SECURITY.** Bidders must submit with their Bids either cash, a cashier's check, or certified check from a responsible bank in the United States, or corporate surety bond furnished by a surety authorized to do business in the State of California, of not less than ten percent of amount of Bid, payable to City of Sausalito. All Bidders choosing to submit a surety bond must submit it on the required form, Section 00411 (Bond Accompanying Bid). City of Sausalito will reject as non-responsive any Bid submitted without the necessary Bid security.

The City of Sausalito may retain Bid securities and Bid bonds of other than the Apparent Low Bidder for a period of 90 Days after award or full execution of the Contract, whichever first occurs. Upon full execution of the Contract, and upon request by Bidder, City of Sausalito will return to the respective unsuccessful Bidders their Bid securities and Bid bonds.

**8. REQUIRED SUBCONTRACTORS LIST.** All Bidders must submit with their Bids the required information on all Subcontractors in Section 00430 (Subcontractors List) for those Subcontractors who will perform any portion of the Work, including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement according to detailed drawings confined in the plans and specifications, in excess of one half of one percent of total Bid. Violation of this requirement may result in Bid being deemed non-responsive and not being considered.

**9. PRE-BID SITE VISIT.** City of Sausalito will conduct a Pre-Bid Site Visit at the site of Harrison Park, located between the addresses of 174 and 180 Harrison Ave, Sausalito on **Wednesday, August 29th, 2012 at 9:00 a.m.** Bidders are encouraged to submit written questions in connection with the Site Visit. The City of Sausalito will transmit to all parties recorded as having received Bidding documents such Addenda as City of Sausalito in its discretion considers necessary in response to written questions. Bidders shall not rely on oral statements. Oral statements will not be binding or legally effective. Other Pre-Bid Site visits may be scheduled at City of Sausalito's sole discretion, depending on staff availability.

**10. OTHER REQUIREMENTS PRIOR TO BIDDING.** Submission of Bid signifies Bidder's careful examination of Bidding Documents and complete understanding of the nature, extent, and location of Work to be performed. As a condition to Bidding, Bidder must complete tasks listed in Section 00520 (Agreement), Article 5. Submission of Bid shall constitute Bidder's express representation to the City of Sausalito that Bidder has fully completed these tasks.

**11. EXISTING DRAWINGS AND GEOTECHNICAL DATA.** Bidders may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work) by giving City of Sausalito reasonable advance notice, as well as applicable environmental assessment information (if any) regarding the Project. Section 00320 (Geotechnical Data, Existing Conditions and Hazardous Materials Surveys) applies to all supplied existing conditions information and geotechnical reports and all other information supplied regarding existing conditions either above ground or below ground. Documents available for onsite review at the City of Sausalito, 420 Litho Street, Sausalito, CA and the City's website, [www.ci.sausalito.ca.us](http://www.ci.sausalito.ca.us).

**12. ADDENDA.** Bidders must direct all questions about the meaning or intent of Bidding Documents to City of Sausalito Representative in writing. Interpretations or clarifications considered necessary by City of Sausalito in response to such questions will be issued by Addenda mailed, faxed, or delivered to all parties recorded by City of Sausalito as having received Bidding Documents. Addenda will be written and will be issued to each bid to the address or fax number supplied City of Sausalito by Bidder. City of Sausalito may not answer questions received less than ten days prior to the date for opening Bids. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Addenda may also be issued to modify the Bidding Documents as deemed advisable by City of Sausalito. Addenda shall be acknowledged by number with signature in Section 00400 (Bid Form) and shall be part of the Contract Documents. A complete listing of Addenda may be secured from City of Sausalito.

**13. SUBSTITUTIONS.** Bidders must base Bids on products and systems specified in Contract Documents or listed by name in Addenda. Except as provided below, City of Sausalito will consider substitution requests on for “or equal items.” Bidders wanting to use “or equal” item(s) may submit Section 00660 (Substitution Request Forms) items no later than 15 days before the due date for City of Sausalito receiving Bids. After that date, the City of Sausalito may accept “or equal” substitution requests from the contractor awarded the project. To assess “or equal” acceptability of product or system, submittals of substitutions shall contain the information required in Section 00660 (Substitution Request Forms) and set forth in Section 01600 (Product Requirements). Insufficient information will be grounds for rejection of substitution. City of Sausalito shall, within a reasonable period of time after having received a request for substitution, issue in writing its decision as to whether the proposed substitute item is an “or equal” item. City of Sausalito’s decision shall be conclusive on all Bidders.

Approved substitutions shall be listed in Addenda and become part of contact Documents. Substitutions may be requested after submitting Bids and Award of contact only in accordance with requirements specified in Section 01600 (Product Requirements).

**14. WAGE RATES.** Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the contract, as determined by Director of the State of California Department of Industrial Relations, are available through the Dept. of Industrial Relations and are deemed included in the Bidding Documents. Upon request, City of Sausalito will make available copies to any interested party. Also, Contractor shall post the applicable prevailing wage rates at the site.

**15. EQUAL EMPLOYMENT OPPORTUNITY.** Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

**16. BID OPENING.** City of Sausalito will open all Bidders’ Envelopes “A” immediately following bid, initially evaluate them for responsiveness, and determine an Apparent Low Bidder as specified herein. City of Sausalito will not open Envelopes “B” publicly, and except for the Apparent Low Bidder’s Envelope “B” (or as otherwise provided in this Section 00200), they will be returned to the bidder unopened.

**17. DETERMINATION OF APPARENT LOW BIDDER (Envelope “A”).** Apparent Low Bid will be based solely on the total amount of all Bid items (including any alternates as designated by the City of Sausalito) based on assumptions contained in Section 00400 (Bid Form). All Bidders are required to submit Bids on all Bid items (including any alternates as designated by the City of Sausalito).

**18. SECTION DELETED**

**19. BID EVALUATION.** City of Sausalito may reject any or all Bids and waive any informalities or minor irregularities in the Bids. City of Sausalito also reserves the right, in its discretion, to reject any or all Bids and to re-bid the Project. City of Sausalito reserves the right to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids, and to reject the Bid of any Bidder if City of Sausalito believes that it would not be in the best interest of Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is



unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by City of Sausalito. For purposes of this paragraph, an “unbalanced Bid” is one having nominal prices for some work items and enhanced prices for other work items. In evaluating Bids, City of Sausalito will consider Bidders' qualifications, whether or not the Bids comply with the prescribed requirements, omit prices and other data, as may be requested in Section 00400 (Bid Forms) or prior to the Notice of Award.

The City of Sausalito may conduct reasonable investigations and reference checks of Bidder, proposed Subcontractors, suppliers and other persons and organizations as City of Sausalito deems necessary to assist in the evaluation of any Bid; ability qualifications, financial ability proposed Subcontractors, suppliers, and to establish Bidder's responsibility, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to City of Sausalito's satisfaction within the prescribed time. Submission of a Bid constitutes Bidder's consent to the foregoing. City of Sausalito shall have the right to consider information provided by sources other than Bidder. City of Sausalito shall also have the right to communicate directly with Bidder's surety regarding Bidder's bonds.

Discrepancies between the multiplication of units of Work and limit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between written words and figures will be resolved in favor of the words.

Quantities stated in the Bidding Documents are approximate only and are subject to correction upon final measurement of the Work, and are subject further to the rights reserved by the City of Sausalito to increase or diminish the amount of work under any classification as advantages to design or construction needs require. City of Sausalito may determine whether a Bidder is qualified in its sole discretionary judgment.

**20. AWARD.** If the contract is to be awarded, it will be awarded to the lowest responsible responsive Bidder. Following completion of all required City of Sausalito procedures and receipt of all City of Sausalito approvals, City of Sausalito will issue Section 00510 (Notice of Award) to successful Bidder.

**21. BID PROTEST.** Any Bid protest must be submitted in writing to the City of Sausalito's offices, before 5:00 p.m. of the fifth calendar day following opening of Bidder's Envelopes.

The initial protest document must contain a complete statement of the basis for the protest. The protest must refer to the specific portion of the document that forms the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.

Only Bidders who the City of Sausalito otherwise determines are responsive and responsible are eligible to protest a Bid; protests from any other Bidder will not be considered. In order to determine whether a protesting Bidder is responsive and responsible, City of Sausalito may open and evaluate information contained in any protesting Bidder's Envelope “B” and conduct the same investigation and evaluation as City of Sausalito is entitled to take regarding an of Apparent Low Bidder. Any such opened Envelope “B” shall also be subject to all provisions of paragraph 19 above.

The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

The procedure and time limits set forth in this paragraph are mandatory and are Bidder's sole and exclusive remedy in the event of Bid protest. Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings. A Bidder may not rely on a protest submitted by another Bidder, but must timely pursue its own protest.

**22. POST-NOTICE OF AWARD REQUIREMENTS.** After Notice of Award, the successful Bidder must execute and submit the following documents as indicated below. Submit the following documents to City of Sausalito by 4:00 p.m. of the 10th day following Notice of Award. Execution of Contract by City of Sausalito depends upon approval of these documents: Section 00520 (Agreement): To be executed by successful Bidder. Submit four originals, each bearing an original signature. Section 00610 (Construction Performance Bond): To be executed by successful Bidder and surety, in the amount set forth in Section 00610 (Construction Performance Bond). Submit one original. Section 00620 (Construction Labor and Material Payment Bond): To be executed by successful Bidder and surety, in the amount set forth in Section 00620 (Construction Labor and Material Payment Bond). Submit one original. Insurance certificates and endorsements required by Section 00700 (General Conditions) Article 4. Submit one original set. The Guaranty in the form set forth in Section 00630 (Guaranty). Submit four originals, each bearing an original signature.

City of Sausalito shall have the right to communicate directly with Apparent Low Bidder's proposed performance bond surety, to confirm the performance bond. City of Sausalito may elect to extend the time to receive performance and labor and material payment bonds. Successful Bidder's failure to submit the documents required herein, in a proper and timely manner, entitles City of Sausalito to rescind its award, and to cause Bidder's Bid security to be forfeited as provided herein.

**23. FAILURE TO EXECUTE AND DELIVER DOCUMENTS.** If Bidder to whom contact is awarded shall, within the period described in paragraph 24a of this Section 00200, fail or neglect to execute and deliver all required Contract Documents and file all required bonds, insurance certificates, and other documents, City of Sausalito may, in its sole discretion, foreclose on Bidder's deposit surety bond, or deposit Bidder's cashier's check or certified check for collection, and retain the proceeds thereof as liquidated damages for Bidder's failure to enter into the Contract Documents. Bidder agrees that calculating the damages City of Sausalito may suffer as a result of Bidder's failure to execute and deliver all required Contract Documents would be extremely difficult and impractical and that the amount of Bidder's required Bid security shall be the agreed and presumed amount of City of Sausalito's damages. In addition, upon such failure City of Sausalito may determine the next Apparent Low Bidder and proceed accordingly.

**24. MODIFICATION OF COMMENCEMENT OF WORK.** City of Sausalito expressly reserves the right to modify the date for the Commencement of Work under the Contract and to independently perform and complete work related to the Project.

**25. WITHDRAWAL OF BIDS.** Bidders may withdraw their Bids at any time prior to the Bid opening time fixed in this Section 00200, only by written request for the withdrawal of Bid filed with the City of Sausalito's representative. Bidder or its duly authorized representative shall execute request to withdraw Bid. The submission of a Bid does not commit the City of Sausalito to award a contract for the Project, to pay costs incurred in the preparation of a Bid, or to procure or contract for any goods or services.

**26. PUBLIC RECORDS ACT REQUESTS.** In conformance with the Public Records Act, the City of Sausalito will make available to the public Bidder's SOQ (if Bidder's Envelope "B" is opened), all correspondence and written questions submitted during the Bid period, all Bid submissions opened in accordance with the procedures of this Section 00200, and all subsequent Bid evaluation information. All submissions not opened will remain sealed and eventually be returned to the submitter. Except as otherwise required by law, City of Sausalito will not disclose trade secrets or proprietary financial information submitted that has been designated confidential by Bidder (including but not listed to the SOQ). Any such trade secrets or proprietary financial information that a Bidder believes should be exempted from disclosure shall be specifically identified and identified as such. Blanket-type identification by designating whole makes or section shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

Upon a request for records regarding this Bid, City of Sausalito shall notify Bidder involved within ten days from receipt of the request of a specific date when the records will be made available for inspection. If the Bidder timely identifies any impropriety, trade secret, or confidential commercial or financial information that Bidder determines

is not subject to public disclosure and requests City of Sausalito to refuse to comply with the records request, Bidder shall take all appropriate legal action and defend City of Sausalito's refusal to produce the information in all forums; otherwise, City of Sausalito will make such information available to the extent required by applicable law, without restriction.

Information disclosed in the SOQ (if Envelope "B" is opened) and the attendant submissions are the property of City of Sausalito unless Bidder makes specific reference to data that is considered proprietary. Subject to the requirements in the Public Records Act, reasonable efforts will be made to prevent the disclosure of information except on a need-to-know basis during the evaluation process.

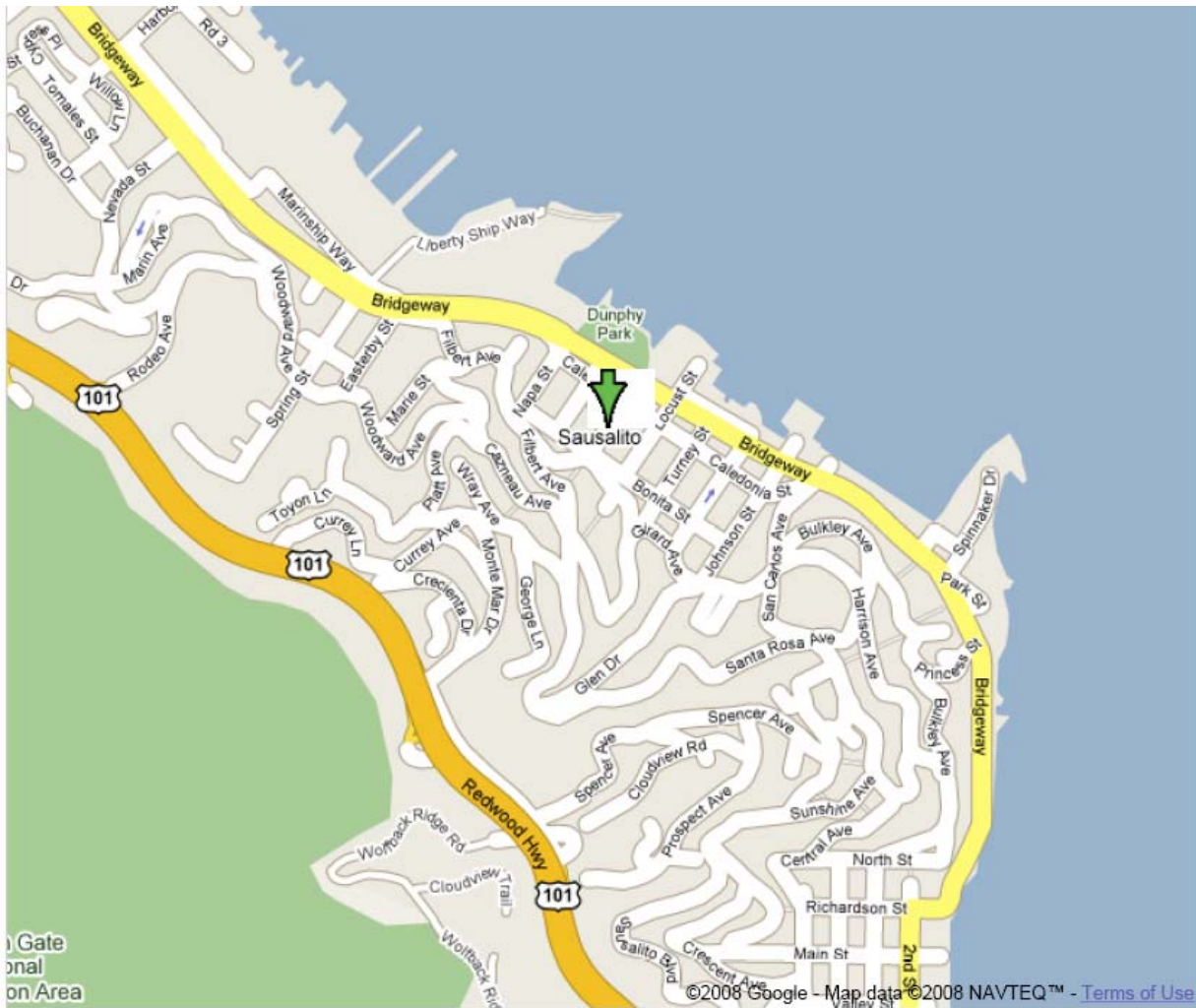
**27. CONFORMED CONSTRUCTION DOCUMENTS.** Following Award of Contract, City of Sausalito will prepare a conformed set of Contract Documents reflecting Addenda issued during bidding, which will, failing objection, constitute the approved set of Contract Documents.

**28. DEFINITIONS.** All abbreviations and definitions of terms used in this Section 00200 are set forth in Section 01420 (References and Definitions).

END OF SECTION

ARTICLE I. SECTION 00201  
ARTICLE II. BID SUBMITTAL VICINITY MAP

Sausalito City Hall  
Office of the City Clerk  
420 Litho St  
Sausalito, CA 94965  
Attn: Debbie Pagliaro



SECTION 00320  
REPORTS, SURVEYS AND EXISTING CONDITIONS

1. SUMMARY

This Section 00320 sets forth the terms and conditions under which Bidder may review, study, use, or rely upon existing geotechnical data at or contiguous to the Site, hazardous materials surveys and existing conditions information concerning existing conditions at or contiguous to the Site, as required in 00520.

2. REPORTS AND INFORMATION

A. Bidders may inspect geotechnical reports, hazardous materials surveys and other information regarding existing conditions available at the City of Sausalito's office, and may obtain copies at cost or reproduction and handling upon Bidder's payment or in costs. These reports, documents and other information, are not part of the Contract Documents. Nevertheless, by submitting a Bid, Bidder accepts full responsibility for reviewing, knowing and understanding the contents of all of these materials.

The City of Sausalito, and its consultants have prepared documents providing a general description of the Site and locations of hazardous materials subject to the Work. These documents consist of surveys included in or with this Project Manual, or made available for review and copying. The surveys are the following:

- (i) There are no boundary current surveys of the site.
- (ii) The demolition plan show current topographic survey of the site

3. USE OF INFORMATION ON EXISTING CONDITIONS

A. Above Ground Existing Conditions. Under no circumstances shall City of Sausalito be deemed to make a warranty or representation of existing aboveground conditions, as-built conditions, or other aboveground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by Bidder by the performance of its own independent investigation that Bidder must perform prior to bidding and Bidder must not rely on the information supplied by City of Sausalito regarding existing conditions. Bidder represents and agrees that in submitting its Bid, it is not relying on any information regarding existing conditions supplied by City of Sausalito.

LIMITED RELIANCE PERMITTED ON CERTAIN INFORMATION

A. Asbestos and Lead Based Paint Data. Except as expressly set forth in this Section 00320, the City of Sausalito does not warrant, and makes no representation regarding, the accuracy or thoroughness of any asbestos and lead based paint data. Bidder represents and agrees that in submitting its Bid, it is not relying on any such data supplied by City of Sausalito, except as specifically set forth herein.

B. Bidder may rely upon the general accuracy of the "technical data" contained in the report(s) and drawings identified above, but only insofar as it relates to the specific material samples tested. Bidder shall conduct at its sole cost and expense any independent investigation(s) required of it or warranted in its judgment prior to demolition or generation of waste materials, or work that could result in worker or community exposure to lead based paint, and identify to the City any discrepancies. The term "technical data" in the referenced reports and drawings shall be limited as follows:

1. The term "technical data" shall include actual reported sample locations, and reported concentrations of asbestos or lead.
2. The term "technical data" does not include, and Bidder may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to the work.
3. The term "technical data" shall not include the location of Underground Facilities.
4. Bidder may not rely on the completeness of reports and drawings for the purposes of bidding or construction. Bidder may rely upon the general accuracy of the "technical data" contained in such reports or drawings.
5. Bidder is solely responsible for any interpretation or conclusion drawn from any "technical data" or any other data, interpretations, opinions, or information contained in supplied information.

END OF SECTION

SECTION 00400  
BID PROPOSAL

PROPOSAL TO THE CITY COUNCIL OF THE CITY OF SAUSALITO

STATE OF CALIFORNIA, FOR PROJECT KNOWN AS:

**"Harrison Park Improvements Project"**

Name of bidder:

Address of bidder:

Telephone Number:

Fax Number:

Date of bid:

The undersigned as bidder declares that the only person or persons interested in this proposal as Principal, are those named herein; that the proposal is made without collusion with any other person, firm or corporation, that he has carefully examined the site and the location of the proposed work and improvement and all the contract documents relating to said project, and that he proposes to provide all necessary transportation, equipment, tools, apparatus, permits, materials and other means of construction, and to do all the work and labor required and specified for the following amount:

All addenda bound with the Specifications or issued during time of bidding are included in this proposal. Receipt of the following addenda and date thereof is acknowledged:

The undersigned has carefully checked all bid figures and agrees that City shall not be responsible or chargeable for any errors or omissions on the part of the undersigned in making up this bid.

Accompanying this bid is a guarantee in the form of corporate surety bond, cashier's or certified check or cash in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ), payable to or in favor of City.

This bid may not be withdrawn for a period of sixty (60) days from opening thereof.

In compliance with Public Contract Code Sections 4100 *et seq.*, there is set forth in the attached list of subcontractors the name and location of the mill, shop or office of each subcontractor who will perform work, labor or render service to the undersigned in or about the construction of the work or improvement contemplated by the bid and the portion of the work to be done by said subcontractor.

Bidder is licensed by the State of California under Contractor's license:

No. \_\_\_\_\_, Class \_\_\_\_\_.

**INDIVIDUAL**

Name of bidder: \_\_\_\_\_  
Address of bidder: \_\_\_\_\_

**CORPORATION**

If bidder is a corporation, state legal name of corporation, state of incorporation, and name of president and secretary.

Name of corporation: \_\_\_\_\_

Name of president: \_\_\_\_\_

Name of secretary: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

**PARTNERSHIP**

If a partnership, state full name of all general partners and name under which business is conducted.

Name of partnership: \_\_\_\_\_

Names of general partners: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Bidder: \_\_\_\_\_



(i) Base Bid Form

Bid Item	Units	Quantity	Unit Price	Price
1. Mobilization/Demobilization <sup>1</sup>	LS	1		
2. Erosion Control/Pollution Prevention	LS	1		
3. Demolition	LS	1		
4. Wood Retaining Wall @ Perimeter/Fence w/subdrain & Piers	LF	75		
5. Redwood Fencing	LF	133		
6. Hogwire Wood Fencing	LF	120		
7. Rough Grading	LS	1		
8. Concrete Piers	EA			
9. Concrete (excluding stairs/Ballaster)	LF	215		
10. Concrete Stairs	SF	87		
11 Soil Prep – Play Area/Patio Area	SF	2700		
12. Engineered Wood Fiber (12” Deep)	SF	2000		
13. Permeable Concrete 4” (Walkway Surfacing)	SF	425		
14. Brick-Patio Area	SF	200		
15. Play Apparatus-CIP	LS	1		
16. Soil Prep – Planting Beds	SF	1750		
17. Ground Cover (bulbs to 1 gallon)	SF	1250		
18. Ground Cover (5 gallon)	EA	7		
19. Shrubs (5 gallon)	EA	14		
20 Tree – 15 gallon.	EA	8		
21. Tree – 24” box	EA	1		
22. Fountain	EA	1		
23. Entrance Treatment incl. Gate	LS	1		
24. Staging Plan	LS	1		
25. Traffic Control	LS	1		
<b>Total Base Bid Items</b>				
<b>Add Alternate</b>				
4. Alt. Concrete Retaining Wall	LF	75		
26. Irrigation w/Controller	LS	1		

<sup>1</sup> Maximum allowable Mobilization/Demobilization Bid, 5 percent of Total Base Bid

The City reserves the right to reject any and all Bids and to waive any and all irregularities and informalities in Bids not involving price, time or changes in the Work. The City reserves the right to reject any nonconforming, nonresponsive, incomplete, unbalanced or conditional Bids.

In case of discrepancy between the unit price and the line item cost set forth for a unit price item, the unit price shall prevail and, shall be utilized as the basis for determining the lowest responsive, responsible bidder. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Cost" column, then the amount set forth in the "Item Cost" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between bid amounts stated in words and in figures will be resolved in favor of the amount stated in words. Final payment shall be determined by the Engineer from measured quantities of work performed based upon the unit price.

If the contract is to be awarded, it will be awarded to responsible Bidder that submits the lowest responsive bid.

(ii) Additive/Deduct Bid Items

The following Alternate Bid amounts shall be added to or deducted from the Total Bid Price entered above at City's sole option. City can choose to include one or more of the Alternate Bids in the Project at its sole discretion. If any of the Alternate Bids are selected by City, the resulting amount shall be added to or deducted from Total Bid Price for the Project. City can award/select Alternate Bid items at any time(s).

Bid Item	Units	Quantity	Unit Price	Price
A1. Total Cost per Day to Work Extended Hours	DAY	1		
A2. Total Savings per Day due to Schedule Acceleration	DAY	1		

SECTION 00411  
BOND ACCOMPANYING BID

KNOW ALL BY THESE PRESENTS:

That the undersigned [ \_\_\_\_\_ ] as Principal and the undersigned as Surety are held and firmly bound unto the THE CITY OF SAUSALITO ("City of Sausalito"), as obligee, in the penal sum of [ \_\_\_\_\_ ] Dollars [(\$ \_\_\_\_\_)] lawful money of the United States of America being at least ten percent (10%) of the aggregate amount of said Principal [ \_\_\_\_\_ ]'s base Bid plus accepted Alternates, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is submitting a Bid for City of Sausalito Harrison Park Renovation Project

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Bid submitted by the said Principal be accepted and the Contract be awarded to said Principal and said Principal shall within the required periods enter into the Contract so awarded and provide the required Construction Performance Bond, Construction Labor and Material Payment Bond, insurance certificates, and all other endorsements, forms, and documents required under Section 00200 (Instructions to Bidders), then this obligation for the Bid Bond shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument this [ \_\_\_\_\_ ] day of [ \_\_\_\_\_ ], 2012.

(Corporate Seal)

By

Principal

Surety

(Corporate Seal)

By

Attorney in Fact

END OF SECTION

**Section 00420**  
**BIDDER INFORMATION**

Contractor's Licensing Statement

The undersigned is licensed in accordance with the laws of the State of California providing for the registration of Contractors.

Contractor's License Number

Name of Individual Contractor (Print or Type):

Signature of Owner

Business Address and Telephone Number

Name of Firm

Business Address and Telephone Number

Signature, title, and address of members signing on behalf of the partnership:

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

Address

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

Address

or

Name of Corporation

Business Address and Telephone Number

Corporation organized under the laws of the State of

Signature of President of Corporation

---

Signature of Secretary of Corporation

---

CONTRACTOR'S EXPERIENCE STATEMENT

The following outline is a record of the undersigned Bidder's experience in construction of a type similar in magnitude and character to that contemplated under this Contract. Additional numbered pages may be attached as needed.

**CONTRACTOR INFORMATION AND EXPERIENCE FORM**

**A. INFORMATION ABOUT BIDDER**

\*\*Indicate not applicable ("N/A") where appropriate.\*\*

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

Facsimile Number

Telephone Number

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

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

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

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

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

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

6.3 President's Name: \_\_\_\_\_

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

\_\_\_\_\_

6.5 Secretary's Name: \_\_\_\_\_

6.6 Treasurer's Name: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.0 List Trade References:

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

15.0 List Bank References (Bank and Branch Address):

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

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**EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE**

***Personnel:***

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

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

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2. Summarize each person's specialized education:

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

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4. Summarize such experience:

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Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless replaced by personnel of equivalent experience and qualifications approved in advance by City.

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SAFETY QUALIFICATION CRITERIA

The following information will be used to determine if the bidder meets the minimum safety requirements for this Project. To qualify to bid and be awarded the Project, the Contractor's three year average Workers' Compensation Experience Modification (EMR) must not be greater than 1.1 (110%). The Bidder shall list its Experience Modification Rate for the last three (3) complete years (available from your insurance carrier).

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

Year	EMR
_____	_____
_____	_____
_____	_____

Three Year Average = \_\_\_\_\_

To verify the above information, the City will contact the Bidder's Workers' Compensation Insurance carrier. The Bidder shall authorize its carrier to release this information. Failure to release this information will result in the Bid being non-responsive and result in automatic disqualification of the Bid.

Worker's Compensation Insurance Company: \_\_\_\_\_

Contact Person for Insurance Company: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_

---

**Additional Bidder's Statements:**

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

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**B. VERIFICATION AND EXECUTION**

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

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

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

SECTION 00411  
BOND ACCOMPANYING BID

KNOW ALL BY THESE PRESENTS:

That the undersigned [ \_\_\_\_\_ ] as Principal and the undersigned as Surety are held and firmly bound unto the THE CITY OF SAUSALITO ("City of Sausalito"), as obligee, in the penal sum of [ \_\_\_\_\_ ] Dollars [(\$ \_\_\_\_\_)] lawful money of the United States of America being at least ten percent (10%) of the aggregate amount of said Principal [ \_\_\_\_\_ ]'s base Bid plus accepted Alternates, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is submitting a Bid for City of Sausalito Harrison Park Renovation Project

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Bid submitted by the said Principal be accepted and the Contract be awarded to said Principal and said Principal shall within the required periods enter into the Contract so awarded and provide the required Construction Performance Bond, Construction Labor and Material Payment Bond, insurance certificates, and all other endorsements, forms, and documents required under Section 00200 (Instructions to Bidders), then this obligation for the Bid Bond shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument this [ \_\_\_\_\_ ] day of [ \_\_\_\_\_ ], 2012.

(Corporate Seal)

By

Principal

Surety

(Corporate Seal)

By

Attorney in Fact

END OF SECTION

SECTION 00460  
SCHEDULE OF MAJOR EQUIPMENT AND MATERIAL SUPPLIERS

The undersigned Bidder represents that, if awarded the Contract, the items of major equipment and materials specified below will be supplied by the manufacturers or suppliers specified below. By so indicating, bidder warrants that the equipment and materials manufacturer and/or supplied by the named manufacturer or supplier will be provided on the Project.

Pursuant to Section 3400 of the Public Contract Code the following materials, products, equipment, or systems are now in use on the particular public improvement described as City of Sausalito. At each instance in these specifications that said designated materials, products, equipment or systems are designated by the brand name(s), listed below, they are so designated to match the existing finishes or maintain compatibility and continuity in functionality, controls and / or replacement parts that are in place at the City of Sausalito. The Contractor will furnish and apply only these brands of designated materials, products, equipment or systems, and no substitutions shall be deemed to be "or equal" or allowed.

Item	Manufacturer or Supplier
1. [ ]	_____
2. [ ]	_____
[ ]	_____
[ ]	_____
[ ]	_____
[ ]	_____
[ ]	_____
[ ]	_____
[ ]	_____
[ ]	_____

Add additional lines if necessary.

Bidder: \_\_\_\_\_

SIGNATURE

DATE

END OF SECTION



SECTION 00505  
NOTICE OF INTENT TO AWARD FOR CONSTRUCTION

DATE POSTED: \_\_\_\_\_

PROJECT TITLE: SAUSALITO HARRISON PARK RENOVATION PROJECT

The Director of Public Works of the City of Sausalito, intends to recommend to the **City Council of the City of Sausalito** on [Enter Date], the award of the above-referenced project to [Company Name] for the Construction of the Council Chambers Restrooms for an amount of \$XXX,XXX.xx

If approved, a formal Notice of Award will be issued.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_

Jonathon Goldman  
[Name]

Director of Public Works  
[Title]

City of Sausalito

END OF SECTION



SECTION 00510  
Notice of Award

Dated: [Enter Date]

TO: Company Name \_\_\_\_\_  
ADDRESS: Company Address \_\_\_\_\_  
CONTRACT NO.: \_  
CONTRACT FOR:

THE SAUSALITO HARRISON PARK RENOVATIO PROJECT

The Contract Sum of your contract is [write down construction value] Dollars and no/100 (\$\_xxx,xxx.xx\_).

- 1) Five copies of each of the proposed Contract Documents (except Specifications and Drawings) accompany this Notice of Award. Three sets of Specifications and Drawings will be delivered separately or otherwise made available to you immediately.
- 2) You must comply with the following conditions by 3:00 p.m. on **[Enter date]**,
  - a) Deliver to City of Sausalito two fully executed counterparts of Section 00520 (Agreement). Each of the Contract Documents must bear your signature on the cover page.
  - b) Deliver to City of Sausalito one original Section 00610 (Construction Performance Bond), executed by you and your surety.
  - c) Deliver to City of Sausalito one original Section 00620 (Construction Labor and Material Payment Bond), executed by you and your surety.
  - d) Deliver to City of Sausalito one original set of the insurance certificates with endorsements required under Section 00700 (General Conditions).
  - e) Deliver to City of Sausalito two original copies of Section 00630 (Guaranty), each executed by you.
- 3) Failure to comply with these conditions within the time specified will entitle City of Sausalito to consider your Bid abandoned, to annul this Notice of Award, and to declare your Bid security forfeited.
- 4) Within 10 Days after you comply with the conditions in paragraph 2 of this Section 00510, City of Sausalito will return to you one fully signed counterpart of Section 00520 (Agreement) with the Contract Documents.
- 5) Upon commencement of the Work, you and each of your Subcontractors shall certify and make available for inspection payroll records on forms provided by the Division of Labor Standards Enforcement, in accordance with Section 1776 of the California Labor Code.
- 6) Send all of the required above listed items to The City of Sausalito, 420 Litho St, Sausalito, CA 94965, to the attention of Jonathon Goldman.

CITY OF SAUSALITO ("City of Sausalito")

BY: \_\_\_\_\_  
Jonathon Goldman  
Director of Public Works

END OF SECTION

SECTION 00520  
AGREEMENT

THIS AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **[Name of Contractor]** whose place of business is located at \_\_\_\_\_, \_\_\_\_\_ **[Address of Contractor]** ("Contractor"), and the CITY OF SAUSALITO ("City of Sausalito") acting under and by virtue of the authority vested in the City of Sausalito by the laws of the State of California.

WHEREAS, City of Sausalito, by its Resolution No. \_\_\_\_\_ adopted on the \_\_\_\_ day of \_\_\_\_\_ awarded to Contractor the following contract:

THE SAUSALITO HARRISON PARK RENOVATION PROJECT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and City of Sausalito agree as follows:

Article 1. Work

Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

Article 2. City of Sausalito's Representative, **Architect/Engineer and Project Manager**

All notices or demands to City of Sausalito under the Contract Documents shall be submitted to the City of Sausalito's Representative in writing at:

Jonathon Goldman  
Director of Public Works  
City of Sausalito  
420 Litho St.  
Sausalito, CA 94965-1933

or to such other person(s) and address(es) as City of Sausalito shall provide to Contractor.

Article 3. Contract Time and Liquidated Damages

3.1 Contract Time.

Contractor shall commence Work at the Site on the date established in the Notice to Proceed. City of Sausalito reserves the right to modify or alter the Commencement Date of the Work.

Contractor shall achieve Substantial Completion of the entire Work within **90 calendar** days from the date when the Contract Time commences to run as provided in Section 00700 (General Conditions). Contractor shall achieve Final Completion of the entire Work and be ready for Final Payment in accordance with Section 01770 (Contract Closeout) within **30** calendar days from the date of acceptance of Substantial Completion to run as provided in Section 00700 (General Conditions).

3.2 Liquidated Damages.

City of Sausalito and Contractor recognize that time is of the essence of this Agreement and that City of Sausalito will suffer financial loss if all or any part of the Work is not completed including consequential loss of use and disruption of normal operations within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Article 15 of Section 00700 (General Conditions),

Contractor and City of Sausalito agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by City of Sausalito because of a delay in completion of all or any part of the Work. Accordingly, City of Sausalito and Contractor agree that as liquidated damages for delay Contractor shall pay City of Sausalito:

**\$500.00** for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by City of Sausalito resulting from delay in completion of the Work.

Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by City of Sausalito as a result of delay or costs of substitute facilities. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective Work, lost revenues or damages suffered by others who then seek to recover their damages from City of Sausalito (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

#### Article 4. Contract Sum

City of Sausalito shall pay Contractor the Contract Sum for completion of Work in accordance with Contract

Documents as follows:

\$XXX,XXX,XXX.XX

#### Article 5. Contractor's Representations

In order to induce City of Sausalito to enter into this Agreement, Contractor makes the following representations and warranties:

5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

5.2 Contractor has given City of Sausalito prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and the written resolution thereof through Addenda issued by City of Sausalito is acceptable to Contractor.

Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein.

Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contracting Code §4100 *et seq.* in Section 00430

## Article 6. Contract Documents

Contract Documents consist of the following documents, including all changes, addenda, and modifications thereto:

The entirety of Division 00, including:

- Document 00510 Notice of Award
- Document 00520 Agreement
- Document 00550 Notice to Proceed
- Document 00610 Construction Performance Bond
- Document 00620 Construction Labor and Material Payment Bond
- Document 00630 Guaranty
- Document 00650 Agreement and Release of Any and All Claims
- Document 00660 Substitution Request Form
- Document 00700 General Conditions
- Document 00800 Supplementary Conditions
- Document 00805 Supplementary Conditions – Hazardous Materials
- Document 00821 Insurance
- Document 00822 Apprenticeship Program
- ADD ESCROW AGREEMENT
- Document 00910 Addenda

The entirety of Specification Division 01, including:  
Drawings and Specifications as attached and referred

6.2 The Contract Documents may only be amended, modified or supplemented as provided in Section 00700 (General Conditions).

## Article 7. Miscellaneous

7.1 Terms used in this Agreement are defined in Section 00700 (General Conditions) and Section 01420 (References and Definitions) and will have the meaning indicated therein.

It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of City of Sausalito or acting as an employee, agent, or representative of City of Sausalito, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the City of Sausalito is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contracting Code §4100 *et seq.*

In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body 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. §15) or under 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 the subcontract. This assignment shall be made and become effective at the time City of Sausalito tenders final payment to Contractor, without further acknowledgment by the parties.

Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are

deemed included in the Contract Documents by reference and on file at City of Sausalito's office, and shall be made available to any interested party on request. Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

Contractor and each of Contractor's subcontractors agrees to complete and verify construction reports on a form prescribed by the Division of the State Architect and to file the reports no less than quarterly during construction as required by Title 24; at the completion of the Work; at the suspension of work for a period of more than one month; whenever the services of Contractor or any of Contractor's subcontractors are terminated for any reason; and at any time a special verified report is required by the Division of the State Architect.

Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Marin, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Marin County. Both parties hereby waive their rights under California Code of Civil Procedure Section 394 to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue. Contractor accepts the Claims Procedure in Section 00700, Article 12, established under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

CITY OF SAUSALITO:  
CITY OF SAUSALITO

CONTRACTOR:  
[Contractor's name]

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

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

END OF SECTION

SECTION 00550  
NOTICE TO PROCEED

Dated: \_\_\_\_\_, 2012

To: \_\_\_\_\_  
(Contractor)

Address: \_\_\_\_\_

CONTRACT FOR:  
THE SAUSALITO HARRISON PARK RENOVATION PROJECT

You are notified that the Contract Time under the above Contract will commence to start on \_\_\_\_\_ 2012. Contractor shall achieve Substantial Completion of the entire Work within **90 Calendar** days from the date when the Contract Time commences. Contractor shall achieve Final Completion within **30** calendar days from the date of acceptance of Substantial Completion.

**BEFORE YOU MAY START ANY WORK AT THE SITE, YOU MUST:**

- Submit certified Safety Program and related information, and comply with all requests of/by, the City of Sausalito's safety officer or designated Representative.
- Submit copies of applicable permits.
- Attend preconstruction conference. The preconstruction conference shall be arranged by the City of Sausalito's Representative.

City of Sausalito

By : \_\_\_\_\_  
Jonathon Goldman  
Director of Public Works

END OF SECTION

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SECTION 00610  
CONSTRUCTION PERFORMANCE BOND

THIS CONSTRUCTION PERFORMANCE BOND ("Bond") is dated \_\_\_\_\_, is in the penal sum of \_\_\_\_\_ [which is one hundred percent of the Contract Price], and is entered into by and between the parties listed below to ensure the faithful performance of the Construction Contract listed below. This Bond consists of this page and the Bond Terms and Conditions, paragraphs 1 through 12, attached to this page. Any singular reference to \_\_\_\_\_ ("Contractor"), \_\_\_\_\_ ("Surety"), City of Sausalito ("City of Sausalito") or other party shall be considered plural where applicable.

CONTRACTOR:

Name

Address

City/State/Zip

SURETY:

Name

Principal Place of Business

City/State/Zip

CONSTRUCTION CONTRACT:

THE SAUSALITO HARRISON PARK RENOVATION PROJECT

at Sausalito, California.

DATED \_\_\_\_\_, 2012 in the Amount of \$ \_\_\_\_\_ (the "Penal Sum")

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

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

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

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

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

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to City of Sausalito for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no City of Sausalito Default, Surety's obligation under this Bond shall arise after:
  - 3.1 City of Sausalito has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
  - 3.2 City of Sausalito has agreed to pay the Balance of the Contract Sum:

3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract; or

3.2.2 To a contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.

4. When City of Sausalito has satisfied the conditions of paragraph 3, Surety shall promptly (within 30 days) and at Surety's expense elect to take one of the following actions:

4.1 Arrange for Contractor, with consent of City of Sausalito, to perform and complete the Construction Contract (but City of Sausalito may withhold consent, in which case the Surety must elect an option described in paragraphs 4.2, 4.3 or 4.4, below); or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; provided, that Surety may not select Contractor as its agent or independent contractor without City of Sausalito's consent; or

4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors acceptable to City of Sausalito for a contract for performance and completion of the Construction Contract, and, upon determination by City of Sausalito of the lowest responsible bidder, arrange for a contract to be prepared for execution by City of Sausalito and the contractor selected with City of Sausalito's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in paragraph 6, below, exceed the Balance of the Contract Sum, then Surety shall pay to City of Sausalito the amount of such excess; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, and, after investigation and consultation with City of Sausalito, determine in good faith its monetary obligation to City of Sausalito under paragraph 6, below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefore to City of Sausalito with full explanation of the payment's calculation. If City of Sausalito accepts Surety's tender under this paragraph 4.4, City of Sausalito may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default. If City of Sausalito disputes the amount of Surety's tender under this paragraph 4.4, City of Sausalito may exercise all remedies available to it at law to enforce Surety's liability under paragraph 6, below.

5. If Surety does not proceed as provided in paragraph 4, above, then Surety shall be deemed to be in default on this Bond ten days after receipt of an additional written notice from City of Sausalito to Surety demanding that Surety perform its obligations under this Bond. At all times City of Sausalito shall be entitled to enforce any remedy available to City of Sausalito at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, advance critical work to mitigate schedule delay, or coordinate work with other consultants or contractors.

6. Surety's monetary obligation under this Bond is limited by the Amount of this Bond identified herein as the Penal Sum. This monetary obligation shall augment the Balance of the Contract Sum. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the Construction Contract. Surety's obligations shall include, but are not limited to:

6.1 The responsibilities of Contractor under the Construction Contract for completion of the Construction Contract and correction of defective work;

6.2 The responsibilities of Contractor under the Construction Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Construction Contract, actual damages caused by non-performance of the Construction Contract including, but not limited to, all valid and proper back charges, offsets, payments, indemnities, or other damages;



6.3 Additional legal, design professional and delay costs resulting from Contractor Default or resulting from the actions or failure to act of the Surety under paragraph 4, above (but excluding attorney's fees incurred to enforce this Bond).

7. No right of action shall accrue on this Bond to any person or entity other than City of Sausalito or its successors or assigns.

8. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, purchase orders and other obligations, including changes of time. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required there under, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.

9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between City of Sausalito and Contractor regarding the Construction Contract, or in the courts of the County of Marin or in a court of competent jurisdiction in the location in which the work is located. Communications from City of Sausalito to Surety under paragraph 3.1 of this Bond shall be deemed to include the necessary agreements under paragraph 3.2 of this Bond unless expressly stated otherwise.

10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to City of Sausalito shall be mailed or delivered as provided in Section 00520 (Agreement). Actual receipt of notice by Surety, City of Sausalito or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.

11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein.

12. Definitions.

12.1 Balance of the Contract Sum: The total amount payable by City of Sausalito to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Construction Contract.

12.2 Construction Contract: The agreement between City of Sausalito and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.

12.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract including, but not limited to, "default" or any other condition allowing a termination for cause as provided in Section 00700 (General Conditions).

12.4 City of Sausalito Default: Material failure of City of Sausalito, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF SECTION

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SECTION 00620  
CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

THIS CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND ("Bond") is dated \_\_\_\_\_, is in  
the \_\_\_\_\_ penal \_\_\_\_\_ sum \_\_\_\_\_ of

\_\_\_\_\_ [one hundred percent of the Contract Price], and is entered into by and between the parties listed below to ensure the payment of claimants under the Construction Contract listed below. This Bond consists of this page and the Bond Terms and Conditions, paragraphs 1 through 13, attached to this page. Any singular reference to \_\_\_\_\_ ("Contractor"), \_\_\_\_\_ ("Surety"), the City of Sausalito ("City of Sausalito") or other party shall be considered plural where applicable.

CONTRACTOR:

SURETY:

Name

Name

Address

Principal Place of Business

City/State/Zip

City/State/Zip

CONSTRUCTION CONTRACT:

THE SAUSALITO HARRISON PARK RENOVATION PROJECT

at Sausalito, California.

DATED \_\_\_\_\_, 2012 in the Amount of \$ \_\_\_\_\_ (the "Penal Sum")

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

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

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

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

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

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to City of Sausalito and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to City of Sausalito, this obligation shall be null and void if Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants; and

2.2 Defends, indemnifies and holds harmless City of Sausalito from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided City of Sausalito has promptly notified Contractor and Surety (at the address set forth on the signature page of this Bond) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety, and provided there is no City of Sausalito Default.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly through its Subcontractors, for all sums due Claimants. If Contractor or its Subcontractors, however, fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to Work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor or Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such Work and labor, then Surety shall pay for the same, and also, in case suit is brought upon this Bond, a reasonable attorney's fee, to be fixed by the court.
4. Consistent with the California Mechanic's Lien Law, Civil Code §3082, *et seq.*, Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
5. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety under this Bond.
6. Amounts due Contractor under the Construction Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of Contractor and Surety under this Bond.
7. City of Sausalito shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations. Surety further hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract, or to the Work to be performed there under, or materials or equipment to be furnished there under or the Specifications accompanying the same, shall in any way affect its obligations under this Bond, and it does hereby waive any requirement of notice or any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the Work or to the Specifications or any other changes.
9. Suit against Surety on this Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both, but, per Civil Code §3249, must be commenced before the expiration of six months after the period in which stop notices may be filed as provided in Civil Code §3184.
10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to City of Sausalito shall be mailed or delivered as provided in Section 00520 (Agreement). Actual receipt of notice by Surety, City of Sausalito or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
11. This Bond has been furnished to comply with the California Mechanic's Lien Law including, but not limited to, Civil Code §§3247, 3248, *et seq.* Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted here from and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

13. Definitions.

13.1 Claimant: An individual or entity having a direct contract with Contractor or with a Subcontractor of Contractor to furnish labor, materials or equipment for use in the performance of the Contract, as further defined in California Civil Code §3181. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Unemployment Development Department as referred to in Civil Code §3248(b).

13.2 Construction Contract: The agreement between City of Sausalito and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.

13.3 City of Sausalito Default: Material failure of City of Sausalito, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract, provided that failure is the cause of the failure of Contractor to pay the Claimants and is sufficient to justify termination of the Construction Contract.

END OF SECTION

SECTION 00630  
GUARANTY

TO THE CITY OF SAUSALITO for construction of

THE SAUSALITO HARRISON PARK RENOVATION PROJECT

SAUSALITO, CALIFORNIA.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Contractor hereby grants to City of Sausalito for a period of one year following the date of Notice of Completion, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use or occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Completion.

If within one year after the date of Final Completion, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to City of Sausalito and in accordance with City of Sausalito's written instructions, correct such defective Work. Contractor shall remove any defective Work rejected by City of Sausalito and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City of Sausalito may have the defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct defective Work, or defects are discovered outside the correction period, City of Sausalito shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents, including, without means of limitation, Section 01420 (References and Definitions).

The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

\_\_\_\_\_  
Firm/Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City/State/Zip

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

\_\_\_\_\_  
Date

END OF SECTION

---

SECTION 00650  
AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS ("Agreement and Release"), made and entered into this [ ] day of [ ], 2012, by and between the CITY OF SAUSALITO ("City of Sausalito"), and \_\_\_\_\_ ("Contractor"), whose place of business is at \_\_\_\_\_.

RECITALS

City of Sausalito and Contractor entered into Contract Number [ ] (the "Contract").

B. The Work under the Contract has been completed.

Now, therefore, it is mutually agreed between City of Sausalito and Contractor as follows:

AGREEMENT

1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$ _____
Modified Contract Sum	\$ _____
Payment to Date	\$ _____
Liquidated Damages	\$ _____
Payment Due Contractor	\$ _____

2. Subject to the provisions of this Agreement and Release, City of Sausalito will forthwith pay to Contractor the sum of \$ \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with City of Sausalito as of the date of such payment.

3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against City of Sausalito arising from the Contract, except for the claims described in paragraph 4 of this SECTION 00650. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against City of Sausalito, and all if its agents, employees, consultants (including without limitation Consulting Engineer), inspectors, representatives, assignees and transferees except for the Disputed Claims set forth in paragraph 4 of this Section 00650. Nothing in this Agreement and Release shall limit or modify Contractor's continuing obligations described in paragraph 6 of this Section 00650.

4. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

Claim No.	Date Submitted	Description of Claim	Amount of Claim
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[Insert information, including attachment if necessary]

5. Consistent with California Public Contract Code Section 7100, Contractor hereby agrees that, in consideration of the payment set forth in paragraph 2 of this Section 00650, Contractor hereby releases and forever discharges City of Sausalito, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract

6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.

7. Contractor shall immediately defend, indemnify and hold harmless the City of Sausalito, any of its Representatives, Architects/Engineers, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in paragraph 4 of this Section 00650.

8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor.

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.

11. All rights of City of Sausalito shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.



\* \* \* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \* \* \*

CITY OF SAUSALITO

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

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

[CONTRACTOR]

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

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

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

END OF SECTION

SECTION 00660  
SUBSTITUTION REQUEST FORM

To: City of Sausalito

Project: HARRISON PARK RENOVATION PROJECT

Contractor: \_\_\_\_\_

Subcontractor/Supplier: \_\_\_\_\_

Drawing Sheet Reference/Detail No: \_\_\_\_\_

The undersigned Bidder submits for consideration the following equipment instead of the specified item for the above project:

Section	Paragraph	Specified Item
---------	-----------	----------------

Proposed Substitution: \_\_\_\_\_

The undersigned encloses the information required herein. If this Section 00660 is being submitted by a Bidder wishing to use "or equal" item(s) as provided in Section 00200 (Instructions to Bidders), the undersigned Bidder must also enclose the technical information (other than cost) otherwise required for a post-Award of Contract Request for Substitution ("RFS") under Section 01600 (Product Requirements). However, If this Section 00660 is being submitted under provisions of Contract Documents after Award of Contract, the undersigned Contractor must include all information required under Section 1600 (Product Requirements).

The undersigned has (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Drawings and Specifications that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

- A. Does the substitution affect dimensions shown on Drawings?
  
  
  
  
  
  
  
  
  
  
- B. Are the manufacturer's guarantees and warranties on the proposed substitution items identical to those on the specified items? If there are differences, please specify each and every difference in detail.
  
  
  
  
  
  
  
  
  
  
- C. What effect does the substitution have on other contractors, trades, or suppliers?

D. What are the differences between the proposed substitution and the specified item? If proposed substitution has a color or pattern, provide a color board showing proposed substitution in relation to the other adjacent colors and patterns.

E. Will granting the requested substitution cause any schedule delay? (If yes, please explain)

The undersigned Bidder certifies that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item. The contractor shall be responsible for all engineering, permitting, coordination, construction, and costs to all subcontractors associated with the acceptance of the substitution regardless of when those additional costs are identified.

Submitted by:

Bidder/Contractor  
[note applicable]

Signature

Name

Address

City/State/Zip

Telephone: \_\_\_\_\_

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

For Use by City of Sausalito:

\_\_\_\_\_ Accepted \_\_\_\_\_ Accepted as Noted

\_\_\_\_\_ Not Accepted \_\_\_\_\_ Received Too Late

By: \_\_\_\_\_  
City of Sausalito's Representative

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

Remarks:

END OF SECTION

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SECTION 00700  
GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE I. **GENERAL**

1. DOCUMENTS

- (i) Contract Documents are complementary; what is called for by one is as binding as if called for by all. Contract Documents shall not be construed to create a contractual relationship of any kind between (1) Architect/Engineer or City of Sausalito's Representative and Contractor; (2) City of Sausalito and/or its representatives and (except as provided in paragraph 13.9 below) a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (3) between any persons or entities other than City of Sausalito and Contractor. City of Sausalito shall be deemed to be an intended third-party beneficiary of each agreement referenced in clause (2) above, and each such agreement shall so provide. Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor.

2. EXERCISE OF CONTRACT RESPONSIBILITIES

- (i) In exercising its responsibilities and authorities under the Contract Documents, City of Sausalito does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Contractor, Contractor's Subcontractors or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, neither Architect/Engineer nor any of the City of Sausalito's Representatives assume any duties or responsibilities to any Subcontractor, sub-Subcontractor or supplier nor assume any duty of care to Contractor or any Subcontractor, sub-Subcontractor or suppliers.

3. DEFINED TERMS

- (i) Administration of construction shall include the following delineations of responsibilities pursuant to Part 1, Title 24, California Code of Regulations. Contractor shall perform as required under Section 4-343, including, but not limited to verified reports per sections 4-336 and 4-343. All abbreviations and definitions of terms used and not otherwise defined in this Section 00700 are set forth in Section 01420 (References and Definitions). This Section 00700 subdivides at first level into Articles, and then into paragraphs.

ARTICLE II. **BIDDING**

1. INVESTIGATION PRIOR TO BIDDING

- (i) Prior to bidding, Bidders shall perform the review and analysis required by Article 5 of Section 00520 (Agreement). Under the Contract Documents, Contractor is charged with all information and knowledge that a reasonable Bidder would ascertain from having performed the required review and analysis.
- (ii) Conditions Shown on Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions indicated in the Contract Documents, *e.g.*, on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. City of Sausalito warrants, and Contractor may rely on, the accuracy of only limited types of information as discussed below.
  - 1) Aboveground and visible as-built conditions: There is no express or implied warranty and no express or implied representation that any information as to aboveground conditions or visible as-built conditions indicated in the Contract Documents is correctly shown, or indicated, or complete. See Comments on 00520
  - 2) Subsurface conditions: Contractor may rely upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. City of Sausalito is not responsible for Contractor's conclusions or opinions drawn from any subsurface condition information.
  - 3) Conditions Shown in Reports and Drawings Supplied for Informational Purposes: Reference is made to Section 00320 (Geotechnical Data and Existing Conditions) for identification of geotechnical reports, "as built" information, and other drawings or other documents describing physical conditions in or relating to existing surface or subsurface conditions or structures at or contiguous to the Site.

**2. SUBCONTRACTORS**

- (i) Consistent with Public Contract Code Sections 4101 *et seq.*, Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without City of Sausalito’s written approval. At City of Sausalito’s request, Contractor shall provide City of Sausalito with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.
- (ii) Subcontract agreements shall preserve and protect the rights of City of Sausalito under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor’s written agreement (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward City of Sausalito under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- (iii) Contractor shall provide for the assignment to City of Sausalito of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents.

**ARTICLE III. CONTRACT AWARD AND COMMENCEMENT OF THE WORK**

**1. AWARD OF CONTRACT**

City of Sausalito will make the Award of Contract by issuing a Notice of Award. As a condition to City of Sausalito signing Section 00520 (Agreement), however, Contractor shall deliver to City of Sausalito the executed agreements, forms, bonds and insurance documents required by Section 00200 (Instructions to Bidders) in the required quantities and within the required times.

**2. COMMENCEMENT OF WORK**

The Contract Time will commence upon issuance of a Notice to Proceed, on the date indicated in the Notice to Proceed. See also paragraph Article XV(ii) of this Section 00700. Contractor shall not do any Work at the Site prior to Contract commencement. .

**ARTICLE IV. BONDS AND INSURANCE**

**1. BONDS**

- (i) At or before the date indicated in Section 00200 (Instructions to Bidders), Contractor shall file with City of Sausalito the following bonds:
  - 1) Corporate surety bond, in the form of Section 00610 (Construction Performance Bond), in the penal sum of 100% of the Contractor’s Bid as accepted, to guarantee faithful performance of the Work; and
  - 2) Corporate surety bond, in the form of Section 00620 (Construction Labor and Material Payment Bond), in the penal sum of 100% of the Contractor’s Bid as accepted, to guarantee payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of Contract Documents.
- (ii) Sureties shall be satisfactory to City of Sausalito. Corporate sureties on these bonds and on bonds accompanying Bids shall be duly licensed to do business in the State of California and shall have an A.M. Best Company financial rating of **[A]** or better.

**2. INSURANCE**

- (i) See Section 00821 (Insurance), incorporated herein by this reference.

**ARTICLE V. DRAWINGS AND SPECIFICATIONS**

**1. INTENT**

- (i) Drawings and Specifications are intended to describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of Contract Documents. Contractor shall perform



any work, provide services and furnish any materials or equipment that may reasonably be inferred from the requirements of Contract Documents or from prevailing custom or trade usage as being required to produce this intended result. Contractor shall interpret words or phrases used to describe work (including services), materials or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes and standards, including without limitation Title 24 of the California Code of Regulations. The Division and Sections of the Specifications and the identification on any Drawings shall not control the Contractor in dividing the Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.

- (ii) As part of the "Work," Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, shop drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.

## 2. DRAWING DETAILS

- (i) A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by the Architect or the City of Sausalito. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.

## 3. INTERPRETATION OF DRAWINGS AND SPECIFICATIONS

- (i) Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in the Drawings and Specifications prepared by the Architect/Engineer, the matter shall be referred to the Architect/Engineer in writing, with a copy to the Inspector and Project Manager. Architect/Engineer shall issue with reasonable promptness such written clarifications or interpretations of the requirements of the Drawings and Specifications as Architect/Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Drawings and Specifications. Such written clarifications and interpretations will be binding upon the Contractor. The Contractor shall not carry on Work except with the knowledge of Inspector. If the Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Sum or Contract Times then Contractor shall give the Architect or the Representative of the City of Sausalito prompt written notice as provided in **Section 01250 (Modification Procedures)**. If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with Architect's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article Article XII of this Section 00700.

## 4. CHECKING OF DRAWINGS

- (i) Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Figures shown on Drawings shall be followed; Contractor shall not scale measurements. As early as possible and not less than seven calendar days prior to the start of a work activity Contractor shall submit an RFI to the Project Manager detailing any conflict, error, ambiguity or discrepancy which the Contractor may discover. Contractor shall obtain a written interpretation or clarification from Project Manager before proceeding with any Work affected thereby. Failure of the Contractor to report any such conflict, error, ambiguity or discrepancy within the stated time frame may waive Contractor's rights to a modification of the Contract price or time.

5. STANDARDS TO APPLY WHERE SPECIFICATIONS ARE NOT FURNISHED

- (i) It is provided that the Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are set forth by supplying materials or manufactured articles of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited in **Section 01420 (References and Definitions)**, for first-class work of the kind required. The Contractor shall specify in writing to Architect the materials to be used or Work to be performed under this paragraph 5 no later than ten (10) work days prior to furnishing such materials or performance of such Work.

6. DEVIATION FROM SPECIFICATIONS AND DRAWINGS

- (i) As set forth in Part 1, Title 24, California Code of Regulations, no modification or deviation from the Drawings and Specifications will be permitted. Contractor must perform Work in strict accordance with Drawings and Specifications. No order for any alteration, modification or extra which shall increase or decrease the cost of Work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing, and the order signed by the Contractor, and certified by the authorized officer representing City of Sausalito. As appropriate, Change Orders changing the approved Drawings and technical specifications are subject to approval by the Architect under the procedures prescribed in Section 4-338, Part 1, Title 24, California Code of Regulations. Deviations from Drawings and from the dimensions therein given, or from the Specifications, whether or not error is believed to exist, shall be made only when approved in writing by the Architect or the Project Manager.
- (ii) Architect/Engineer may order that locations, lines and grades for Work vary from those shown on Drawings. Changes may be made in location, lines or grades for Work under any item of Contract. In lump sum contracts where Work is affected by variations of locations, lines or grades, all changes in the Contract Documents will be made in accordance with Article Article XIV of this Section 00700.

**7. PRECEDENCE OF DOCUMENTS**

- (i) In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
  - 1) Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
  - 2) Section 00520 (Agreement), and terms and conditions referenced therein;
  - 3) Section 00800 (Supplementary Conditions);
  - 4) Section 00700 (General Conditions);
  - 5) Division 1 Specifications;
  - 6) Division 2 through 16 Specifications;
  - 7) Drawings;
  - 8) Written numbers over figures, unless obviously incorrect;
  - 9) Figured dimensions over scaled dimensions;
  - 10) Large-scale drawings over small-scale drawings.
- (ii) Any conflict between Drawings and Division 2 through 16 Specifications will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- (iii) Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- (iv) In the event the Specifications include divisions above Division 16 (e.g., Division 17 and above), then such divisions shall be included within the Contract Documents unless identified otherwise.

8. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND CONTRACT DOCUMENTS

- (i) Drawings, Specifications and other Contract Documents were prepared for use for Work of Contract Documents only. No part of Contract Documents shall be used for any other construction or for any other purpose except

with the written consent of the Architect or the City of Sausalito. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

**ARTICLE VI. CONSTRUCTION BY CITY OF SAUSALITO OR BY SEPARATE CONTRACTORS**

**1. CITY OF SAUSALITO'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

- (i) City of Sausalito may perform with its own forces, construction or operations related to the Project. City of Sausalito may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility owners perform other work. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in these Contract Documents shall mean the Contractor herein.

**2. MUTUAL RESPONSIBILITY**

- (i) Contractor shall afford all other contractors, utility owners and City of Sausalito (if City of Sausalito is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work as described in Section 01100 properly connects and coordinates with others' work, and shall cooperate with them to facilitate the progress of the Work.
- (ii) Contractor shall coordinate its Work with the work of other separate contractors, City of Sausalito, and utility owners. Contractor shall attend coordination meetings with other contractors, City of Sausalito and its representatives, and utility owners as required by Section 01315 (Project Meetings).
- (iii) Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of other separate contractors, City of Sausalito or utility owners by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of City of Sausalito and the others whose work will be affected.
- (iv) Contractor's duties and responsibilities under paragraph of this Section 00700 are for the benefit of City of Sausalito and also for the benefit of such other contractors and utility owners working at the Site to the extent that there are comparable provisions for the benefit of Contractor in the direct contracts between City of Sausalito and such other contractors and utility owners.
- (v) To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to City of Sausalito in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected. City of Sausalito will require the Contractor responsible for the Defective Work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in the Contract Documents, issue a Change Order. If Contractor fails to measure, inspect and/or report to City of Sausalito in writing defects that are reasonably discoverable, Contractor shall bear all costs of accomplishing the interface acceptable to City of Sausalito. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

**3. CITY OF SAUSALITO AUTHORITY OVER COORDINATION**

- (i) City of Sausalito shall have authority over coordination of the activities of multiple contractors in cases where City of Sausalito performs work with its own forces or contracts with others for the performance of other work on the Project, or utilities work on the Site. City of Sausalito may at any time and in its sole discretion, designate a person or entity other than City of Sausalito to have authority over the coordination of the activities among the various contractors. City of Sausalito's authority with respect to coordination of the activities of multiple contractors and utility owners shall not relieve Contractor of its obligation to other contractors and utility owners to coordinate its Work with other contractors and utility owners as specified in paragraph 6.2 of this Section 00700. Contractor shall promptly notify City of Sausalito in writing when another contractor on the Project fails to coordinate its work with the Work of Contract Documents.

- (ii) Contractor shall suspend any part of the Work or carry on the same in such manner as directed by City of Sausalito when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by Contractor will be allowed if the suspension or Work change is due in whole or in part to Contractor's failure to perform its obligation with other contractors and utility owners. Damages or claims will be allowed only to the extent of fault by City of Sausalito if the suspension or Work change is due in whole or in part to another contractor's failure to coordinate its work with Contractor, other contractors, and utility owners. City of Sausalito reserves the right to back charge Contractor for any damages or claims incurred by other contractors as a result of Contractor's failure to perform its obligations to coordinate with other contractors and utility owners. City of Sausalito may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleaded procedures and Contractor releases City of Sausalito of further liability regarding such funds.

**ARTICLE VII. CITY OF SAUSALITO AND PAYMENT**

**1. CITY OF SAUSALITO'S REPRESENTATIVE(S)**

City of Sausalito's Representative(s) will have limited authority to act on behalf of City of Sausalito as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by City of Sausalito, City of Sausalito will issue all communications to Contractor through City of Sausalito's Representative, and Contractor shall issue all communications to City of Sausalito through City of Sausalito's Representative in a written document. Should any direct communications between Contractor and City of Sausalito's consultants, architects or engineers not identified in Article 2 of Section 00520 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to the City of Sausalito's Representative.

**2. MEANS AND METHODS OF CONSTRUCTION**

Subject to those rights specifically reserved in the Contract Documents, City of Sausalito will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. City of Sausalito will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

**3. RECEIPT AND PROCESSING OF APPLICATIONS FOR PAYMENT**

As required by **Section 01200 (Measurement and Payment)**, Contractor shall prepare the schedules, submit Applications for Payment and warrant title to all Work covered by each Application for Payment. City of Sausalito, City of Sausalito's Representative and the Architect will review Contractor's Applications for Payment and make payment thereon, and Contractor shall make payments to Subcontractors, suppliers and others, as required by Section **01200 (Measurement and Payment)**.

**ARTICLE VIII. CONTROL OF THE WORK**

**1. SUPERVISION OF WORK BY CONTRACTOR**

- (i) {Section Removed Intentionally}
- (ii) Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.
- (iii) Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without City of Sausalito's express written consent. The Superintendent shall be Contractor's representative at the Site and shall have complete authority for the work of the Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor.

## 2. OBSERVATION OF WORK BY CITY OF SAUSALITO'S REPRESENTATIVE AND ARCHITECT/ENGINEER

- (i) Work shall be performed under City of Sausalito's Representative's general observation and administration. Contractor shall comply with City of Sausalito's Representative's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. City of Sausalito's Representative's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- (ii) City of Sausalito's Representative will provide administration of Contract and observation of the Work as hereinafter described.
- (iii) City of Sausalito's Representative will advise and consult with Architect/Engineer and consult with City of Sausalito. City of Sausalito's Representative will have authority to act on behalf of City of Sausalito only to extent provided in the Contract Documents or as set forth in writing by City of Sausalito.
- (iv) City of Sausalito's Representative will visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. However, neither the City of Sausalito's Representative nor Architect/Engineer will be required to make exhaustive or continuous on-site inspections to check quality or quantity of Work. On the basis of on-site observations, the City of Sausalito's Representative and the Architect/Engineer will be informed of progress of Work, and will keep City of Sausalito informed of the Work's progress.
- (v) Neither the City of Sausalito's Representative nor Architect/Engineer will be responsible for nor have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- (vi) Neither the City of Sausalito's Representative nor Architect/Engineer will be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- (vii) Architect/Engineer will review Contractor's submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents as set forth in this Section 00700. Such action will be taken within fourteen (14) calendar days.
- (viii) The City of Sausalito's Representative and the Architect/Engineer will conduct inspections to recommend to City of Sausalito the dates that Contractor has achieved Substantial Completion and Final Completion, and will receive and forward to City of Sausalito for review written warranties and related documents required by Contract Documents and assembled by Contractor.
- (ix) Architect/Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings and Specifications or otherwise) as Architect/Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents.
- (x) Based on its observations, Architect/Engineer may recommend to City of Sausalito that it disapprove or reject Work that Architect/Engineer believes to be defective or will not produce a complete Project that conforms to Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City of Sausalito will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed or completed.

## 3. ACCESS TO WORK

- (i) During performance of Work, City of Sausalito and its agents, consultants, and employees may at any time enter upon Work, shops or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as City of Sausalito's interests may require. Other contractors performing work for City of Sausalito may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Site and its Work areas.

#### 4. EXISTING UTILITIES

- (i) Drawings may indicate above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities, and additional information may be on file at the regional notification center, "Underground Service Alert" ("USA"). Contractor shall locate these known existing installations before proceeding with trenching or other operations that may cause damage, shall maintain them in service where appropriate, and shall repair any damage to them caused by the Work, at no increase in Contract Sum. Additional utilities whose locations are unknown to City of Sausalito are suspected to exist. Contractor shall be alert to their existence; if they are encountered, Contractor shall immediately report to City of Sausalito for disposition of the same. In addition to reporting if any utility is damaged, Contractor shall take appropriate action as provided in this Section 00700. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Contractor's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Section 00700.
- (ii) At no additional cost to City of Sausalito, Contractor shall incorporate into the Work main or trunk line utilities identified in the Contract Documents and other utilities or underground structures known or reasonably discernible and that will remain in service, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service installations damaged by Contractor's operations. Should City of Sausalito determine that Contractor has not responded in a timely manner or not diligently pursued completion of the Work, City of Sausalito may restore service and deduct the costs of such action by City of Sausalito from the amounts due under the Contract.
- (iii) Consistent with Government Code Section 4215, as between City of Sausalito and Contractor, City of Sausalito will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or Section 00320 (Geotechnical Data and Existing Conditions). City of Sausalito will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or Section 00230 (Existing Conditions) with reasonable accuracy, and equipment on the Project necessarily idled during such work.
- (iv) Prior to performing Work at the Site, Contractor shall lay out the locations of known underground utilities that are to remain in service and other significant known underground installations. At no additional cost to City of Sausalito, prior to commencing other Work in proximity to such known underground utilities or installations that can be readily inferred from adjacent surface improvements, Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, such utilities or installations that are to remain and that are subject to damage. This obligation applies to all utilities (including, but not limited to, those referenced in paragraph 8.4.C of this Section 00700).
- (v) Nothing in this Section 00700 shall be deemed to require City of Sausalito to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred by Contractor from the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site. Contractor shall immediately secure all available information and notify City of Sausalito and utility, in writing, of its discovery, while performing Work under the Contract Documents, of any utility facilities not identified in the Drawings and Specifications.

#### 5. UNDERGROUND FACILITIES

- (i) Before commencing work of digging trenches or excavation, Contractor shall review all information available regarding subsurface conditions, including but not limited to information supplied in Section 00320 (Geotechnical Data and Existing Conditions), and subject to the terms and conditions of these documents, Contractor shall also comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:  
Every person planning to conduct any excavation shall contact Underground Service Alert ("USA") <http://www.usanorth.org/> 8\*1\*1 or 800-227-2600 at least two working days, but no more than 14 calendar days, prior to commencing that excavation. In an emergency, advise USA that an emergency excavation is being performed.
- (ii) Contractor shall contact USA, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Contractor is charged with knowledge of

- all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Contractor shall provide City of Sausalito with copies of all USA records secured by Contractor. Contractor shall advise City of Sausalito of any conflict between information provided in Section 00320 (Geotechnical Data and Existing Conditions), the Drawings and that provided by USA records. Contractor's excavation shall be subject to and comply with the Contract Documents, including without limitation Paragraphs 2.1 and 8.4 of this Section 00700.
- (iii) The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for
    - (a) reviewing and checking all available information and data including, but not limited to, Section 00320 (Geotechnical Data and Existing Conditions) and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary back hoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
  - (iv) If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by City of Sausalito or in information on file at USA or is otherwise reasonably available to Contractor, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency as required by Article XVI of this Section 00700), identify the owner of such Underground Facility and give written notice to that owner and to City of Sausalito. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
  - (v) Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by City of Sausalito only where the Underground Facility:
    - 1) Was not shown or indicated in the Contract Documents or in the information supplied pursuant to Section 00320 (Geotechnical Data and Existing Conditions) or in information on file at USA; and
    - 2) Contractor did not know of it; and
    - 3) Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Price or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Contractor pursuant to Section 00320 [Geotechnical Data and Existing Conditions], in information on file at USA, or otherwise reasonably available to Contractor.)
  - (vi) Underground Facilities are inherent in construction involving digging of trenches or other excavations and Contractor is to apply its skill and industry to verify the information available.

#### ARTICLE IX. **WARRANTY, GUARANTY, AND INSPECTION OF WORK**

##### 1. **WARRANTY AND GUARANTY**

- (i) **General Representations and Warranties:** Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

- (ii) Extended Guaranties: Any guaranty exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply City of Sausalito with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- (iii) Environmental and Toxics Warranty: The covenants, warranties and representations contained in this paragraph are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Contractor covenants, warrants and represents to City of Sausalito that:
  - 1) To Contractor's knowledge after due inquiry, no lead or asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or asbestos-containing materials were discovered, Contractor made immediate written disclosure to City of Sausalito.
  - 2) To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
  - 3) To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to City of Sausalito.
  - 4) Contractor's operations concerning the Project are not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide City of Sausalito with copies thereof.

## 2. INSPECTION OF WORK

- (i) All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with section 4-335 and section 4-333 of Part 1, Title 24, California Code of Regulations and the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until final completion and acceptance of Work, shall be subject to inspection and rejection by City of Sausalito, its agents, representatives or independent contractors retained by City of Sausalito to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, City of Sausalito shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- (ii) Contractor shall give City of Sausalito minimum 2 work days notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- (iii) If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish City of Sausalito with the required certificates of inspection, or approval. City of Sausalito will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.



- (iv) If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of City of Sausalito, Contractor shall uncover the Work at City of Sausalito's request. Contractor shall bear the expense of uncovering Work and replacing Work.
- (v) In any case where Contractor covers Work contrary to City of Sausalito's request, Contractor shall uncover Work for City of Sausalito's observation or inspection at City of Sausalito's request. Contractor shall bear the cost of uncovering Work.
- (vi) Whenever required by City of Sausalito, Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, City of Sausalito, in manner herein prescribed for paying for alterations, modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- (vii) City of Sausalito shall select testing agencies approved by the Architect to conduct required tests and inspections for the project. A list of required structural tests and inspections prepared by the Architect/Engineer and approved by the Architect shall be provided to the designated testing agency and Project Inspector prior to the start of construction. Refer to section 4-335(a), Part 1, Title 24, California Code of Regulations.
- (viii) The testing agency shall forward the test results to the Architect, the Architect/Engineer, the Contractor, City of Sausalito and the Project Inspector within 14 calendar days of the date of the test. The testing agency shall forward to the Architect a verified report covering all the tests required to be made by that agency during the progress of the Project.
- (ix) Inspection of the Work by or on behalf of City of Sausalito, or City of Sausalito's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by City of Sausalito, to perform Work in conformance with the Contract Documents and correct defective work promptly upon knowledge thereof.
- (x) Any inspection, evaluation, or test performed by or on behalf of City of Sausalito relating to the Work is solely for the benefit of City of Sausalito, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by City of Sausalito, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

### 3. CORRECTION OF DEFECTIVE WORK

- (i) Contractor shall correct defective Work promptly upon knowledge of it. If Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, City of Sausalito may order Contractor to replace any Defective Work, or stop any portion of Work to permit City of Sausalito (at Contractor's expense) to replace such Defective Work. These City of Sausalito rights are entirely discretionary on the part of the City of Sausalito, and shall not give rise to any duty on the part of City of Sausalito to exercise the rights for the benefit of Contractor or any other party.
- (ii) City of Sausalito may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal.
- (iii) Correction Period: If within one year after the date of Final Completion, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to City of Sausalito and in accordance with City of Sausalito's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by City of Sausalito and replace it with Work that is not defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting there from. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City of Sausalito may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall

pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, City of Sausalito shall have all rights and remedies granted by law.

- (iv) In special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Final Completion of all the Work, the correction period for that part of Work or that item may start to run from an earlier date if so provided by Change Order.
- (v) Where Defective Work or rejected Work (and damage to other Work resulting there from) has been corrected, removed, or replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

#### 4. ACCEPTANCE AND CORRECTION OF DEFECTIVE WORK BY CITY OF SAUSALITO

- (i) City of Sausalito may accept Defective Work. Contractor shall pay all claims, costs, losses and damages attributable to City of Sausalito's evaluation of and determination to accept such Defective Work. If City of Sausalito accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, City of Sausalito may deduct from moneys due Contractor, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Contractor disagrees with City of Sausalito's calculations, Contractor may make a claim as provided in Article XII of this Section 00700. If City of Sausalito accepts any Defective Work after final payment, Contractor shall pay to City of Sausalito, an appropriate amount as determined by City of Sausalito.
- (ii) City of Sausalito may correct and remedy deficiency if, after five workdays' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work in accordance with this Section 00700; or provide a plan for correction of Defective Work acceptable to City of Sausalito; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, City of Sausalito may exclude Contractor from all or part of the Site; take possession of all or part of Work and suspend Contractor's Work related thereto; take possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which City of Sausalito has paid Contractor but which are stored elsewhere. Contractor shall allow City of Sausalito, its representatives, agents, employees, and other contractors and Architect/Engineer's consultants' access to the Site to enable City of Sausalito to exercise the rights and remedies under this paragraph. Contractor shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by City of Sausalito in exercising such rights and remedies. A Change Order for back charges will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, City of Sausalito may deduct from moneys due Contractor, all claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with City of Sausalito's calculations, Contractor may make a claim as provided in Article XII of this Section 00700.
- (iii) City of Sausalito's decisions to accept defective Work or correct defective Work are subject to approval of the Architect, and all other requirements of Title 24, California Code of Regulations.

#### 5. RIGHTS UPON INSPECTION OR CORRECTION

- (iv) Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by City of Sausalito of its rights and remedies.. Where City of Sausalito exercises its rights, it retains all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate Contractor's right to proceed with the Work for cause under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.
- (v) Inspection by City of Sausalito shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive City of Sausalito's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of the Work paid therefore. Contractor's obligation to

complete the Work in accordance with Contract Documents shall be absolute, unless City of Sausalito agrees otherwise in writing.

6. SAMPLES AND TESTS OF MATERIALS AND WORK

- (i) Contractor shall furnish, in such quantities and sizes as may be required for proper examination and tests, samples or test specimens of all materials to be used or offered for use in connection with Work. Contractor shall prepare samples or test specimens at its expense and furnish them to City of Sausalito. Contractor shall submit all samples in ample time to enable City of Sausalito to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.
- (ii) Test samples or specimens of material for testing shall be taken by the Architect/Engineer, his or her representative, Project inspector or representative of the testing agency. In no case shall the Contractor or vendor select the sample. Refer to section 4-335, Part 1, Title 24, California Code of Regulations.

7. PROOF OF COMPLIANCE OF CONTRACT PROVISIONS

In order that City of Sausalito may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to City of Sausalito properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

8. ACCEPTANCE

Inspection by City of Sausalito or its authorized agents or representatives, any order or certificate for the payment of money, any payment, acceptance of the whole or any part of Work by City of Sausalito, any extension of time, any verbal statements on behalf of City of Sausalito or its authorized agents or representatives shall not operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to City of Sausalito herein or therein or any right to damages provided in the Contract Documents. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other subsequent breach.

**ARTICLE X. CONTRACTOR'S ORGANIZATION AND EQUIPMENT**

1. CONTRACTOR'S LEGAL ADDRESS

Address and facsimile number given in Contractor's Bid are hereby designated as Contractor's legal address and facsimile number. Contractor may change its legal address and facsimile number by notice in writing, delivered to City of Sausalito, which in conspicuous language advises City of Sausalito of a change in legal address or facsimile number, and which City of Sausalito accepts in writing. Delivery to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at legal address or of any drawings, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Contractor. Facsimile to Contractor's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Contractor.

2. CONTRACTOR'S OFFICE AT THE WORK SITE

Contractor shall maintain an office at the Site, which office shall be headquarters of a Contractor representative authorized to transmit to and receive from City of Sausalito, communications, instructions or Drawings. Communications, instructions, or Drawings given to Contractor's representative or delivered at the Site office in representative's absence shall be deemed to have been given to Contractor.

3. CONTRACTOR'S SUPERINTENDENTS OR FOREPERSONS

Contractor shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that City of Sausalito may give, and shall be liable for faithful observance of instructions delivered to Contractor or to authorized representative or representatives on Site.

4. PROFICIENCY IN ENGLISH

Supervisors, security guards, safety personnel and employees of Contractor, Subcontractors, vendors or suppliers who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

5. CONTRACTOR'S AND SUBCONTRACTORS' EMPLOYEES

Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If City of Sausalito notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly, disruptive or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work representing City of Sausalito, or violates sanitary rules, or is otherwise unsatisfactory, and if City of Sausalito requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of City of Sausalito.

6. CONTRACTOR TO SUPPLY SUFFICIENT WORKERS AND MATERIALS

- (i) Unless otherwise required by City of Sausalito under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- (ii) At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then City of Sausalito may require Contractor to accelerate the Work and/or furnish additional qualified workers or materials as City of Sausalito may consider necessary, at no cost to City of Sausalito. If Contractor does not comply with the notice within three (3) workdays Days of date of service thereof, City of Sausalito shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as City of Sausalito may elect. City of Sausalito may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate work elements during the time period that City of Sausalito exercises this right. City of Sausalito will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. City of Sausalito will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of City of Sausalito from claims of others.
- (iii) Exercise by City of Sausalito of the rights conferred upon City of Sausalito in paragraph (ii) of this Document 00700, is entirely discretionary on the part of City of Sausalito. City of Sausalito shall have no duty or obligation to exercise the rights referred to in paragraph (ii) of this Section 00700 and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of City of Sausalito's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon City of Sausalito under paragraph (ii) of this Section 00700 are cumulative to City of Sausalito's other rights under any provision of the Contract Documents.

7. CONTRACTOR TO LIST TRADES WORKING

Contractor shall list the trades and number of trades-people working on the Site and their scheduled activities on a daily basis, and provide a copy of that list to the City of Sausalito's Representative.

8. CONTRACTOR'S USE OF THE SITE

Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between City of Sausalito and any owner, former owner or tenant of such land,

structure or buildings. Contractor may not occupy City of Sausalito-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from City of Sausalito.

## ARTICLE XI. PROSECUTION AND PROGRESS OF THE WORK

### 1. SCHEDULES AND EXAMINATIONS OF CONTRACT DOCUMENTS

- (i) Contractor shall submit schedules and reports, Shop Drawings and Submittals in the quantity prescribed and within the required time, arrange conferences and meetings and proceed with the Work in accordance with Contract Documents, including Sections 01315 (Project Meetings), 01310 (Project Management and Coordination), and 01330 (Submittal Procedures).
- (ii) Contractor shall submit to City of Sausalito for review and discussion at the Preconstruction Conference described in Section 01315 (Project Meetings):
  - 1) Project Management and Coordination as required by Sections 01310 (Project Management and Coordination) and 01330 (Submittal Procedures). Contractor shall utilize a CPM Progress Schedule in planning, scheduling, coordinating, performing and controlling Work (including all activities of Subcontractors, assigned contractors, equipment vendors and suppliers). Contractor shall update the CPM Progress Schedule on a monthly basis to depict accurately the actual progress of Work and for evaluating and preparing Contractor's monthly progress payments. Contractor's failure to submit and maintain an acceptable progress schedule may, in City of Sausalito's discretion, and without limiting the materiality of Contractor's other obligations under the Contract Documents, constitute grounds to declare Contractor in material breach of the Contract Documents
  - 2) Within 10 Workdays after the Notice to Proceed, a preliminary schedule of Shop Drawing and Sample submittals that shall list each required submittal and the times for submitting, reviewing and processing such submittal, as required by Section 01330 (Submittal Procedures). If no such schedule is agreed upon, then all Shop Drawings, Samples and product data submittals shall be completed and submitted within 21 Workdays after receipt of Notice to Proceed from City of Sausalito.
  - 3) Within 10 Workdays after the Notice to Proceed, a preliminary Schedule of Values for all the Work which shall include quantities and prices of items aggregating the Contract Sum and shall subdivide each Schedule of Values into component activities in sufficient detail to serve as the basis for progress payments during construction. Such Schedule of Values shall include an appropriate amount of overhead and profit applicable to each item of Work, a line item for Project Record Documents, and a line item for Project scheduling, and shall conform to Section 01200 (Measurement and Payment).
- (iii) Unless otherwise provided in the Contract Documents, at least ten (10) Workdays following Notice to Proceed and before submission of the first application for payment, a conference attended by Contractor, City of Sausalito's Representative, the Architect and others as appropriate, will be held to review for acceptability the schedules submitted in accordance with this Section 00700 and first reviewed at the Preconstruction Conference. Contractor shall have an additional three (3) Workdays to make corrections and adjustments and to complete and resubmit the schedules. Schedules shall be updated and completed as required by Sections 01200 (Measurement and Payment), 01310 (Project Management and Coordination) and 01330 (Submittal Procedures). No progress payment shall be due or owing to Contractor until the schedules are submitted to and acceptable to City of Sausalito's Representative and/or Architect/Engineer as meeting the requirements of the Contract Documents, including Sections 01200 (Measurement and Payment), 01310 (Project Management and Coordination) and 01330 (Submittal Procedures). City of Sausalito's acceptance of Contractor's schedules will not create any duty of care or impose on City of Sausalito any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility therefore.
- (iv) Before commencing any portion of Work, Contractor shall inform City of Sausalito's Representative in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to City of Sausalito's Representative a reasonable time in advance of time at which Contractor proposes to begin Work, so that City of Sausalito may complete necessary preliminary work without inconvenience or delay to Contractor.
- (v) Contractor shall submit submittals and Shop Drawings to City of Sausalito's Representative (or Architect/Engineer if City of Sausalito so designates) for review in strict accordance with Section 01330 (Submittal Procedures).

Submission of a Shop Drawing shall constitute Contractor's representation that all requirements of **Section 01330 (Submittal Procedures)** have been complied with. All submittals will be identified as City of Sausalito may require and in the number of copies specified in **Section 01330 (Submittal Procedures)**.

- (vi) Contractor shall not perform Work that requires submission of a Shop Drawing or Sample or other submittal prior to submission and favorable review of the Shop Drawing or Sample or submittal. Where a Shop Drawing or Sample or other submittal is required by Contract Documents or the final Schedule of Shop Drawing and Sample Submittals accepted by City of Sausalito, any related Work performed prior to City of Sausalito's approval of the pertinent submittal shall be at the sole expense, responsibility and risk of Contractor.

## 2. PROJECT RECORDS

- (i) Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide City of Sausalito with monthly summaries of this information.
- (ii) Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide City of Sausalito with copies for each Day Contractor works on the Project, to be delivered to City of Sausalito either the same Day or the following morning before starting work at the Site. Contractor shall take monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- (iii) City of Sausalito shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, City of Sausalito shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents **(subject to Section 00670 [Escrow Bid Documents])**, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Contractor. City of Sausalito and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 2 at any time during the Project and for a period of five years following Substantial Completion. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.
- (iv) Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained on a daily basis and available to City of Sausalito for review on a monthly basis. Upon completion of the Work, Contractor shall deliver to City of Sausalito, the Project Record Documents, Samples and Shop Drawings and as-built drawings.

## ARTICLE XII. CLAIMS BY CONTRACTOR

### 1. GENERAL

- (i) Contract Interpretation Disputes: Should it appear to Contractor that Work to be performed or any of the matters relative to Contract Documents (including without limitation Drawings or Specifications) are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of Contract Documents (including without limitation Drawings or Specifications), Contractor shall immediately give written notice to City of Sausalito. Contractor shall bear all costs incurred in giving notice. City of Sausalito through its Representative will render a determination regarding the issue, which shall be final. If Contractor disagrees with City of

Sausalito's decision, or if Contractor contends that City of Sausalito failed to provide a decision, Contractor's sole and exclusive remedy is to file a claim in accordance with this Article Article XII. Contractor shall diligently prosecute the Disputed Work (as defined below) to Final Completion pending resolution of any claim.

- (ii) Work Disputes: Contractor shall give written notice to City of Sausalito of any dispute arising under the Contract Documents respecting the true value of any Work performed, the implementation of Work required by Contract Documents, any Work omitted, any extra Work that Contractor may be required to perform or time extensions, respecting the size of any payment to Contractor during the performance of Contract Documents, or of compliance with Contract Documents procedures. City of Sausalito will render a determination regarding the issue, which shall be final. If Contractor disagrees with City of Sausalito's decision, or if Contractor contends that City of Sausalito failed to provide a decision, Contractor's sole and exclusive remedy is to file a claim in accordance with this Article Article XII. Pending the resolution of any claim, Contractor shall diligently prosecute the Disputed Work to Final Completion.
- (iii) The claim notice and documentation procedure described in this Article Article XII applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier. All Subcontractor and supplier claims of any type shall be brought only through Contractor as provided in this Article Article XII. Under no circumstances shall any Subcontractor or supplier make any direct claim against City of Sausalito.
- (iv) "Claim" means a written demand or written assertion by Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of Contract Documents terms, or other relief arising under or relating to Contract Documents. In order to qualify as a "claim," the written demand must state that it is a claim submitted under this Article Article XII.
- (v) The provisions of this Article Article XII constitute a claim procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5, and survive termination, breach or completion of the Contract Documents. Contractor shall bear all costs incurred in the preparation and submission of a claim.

## 2. PROCEDURE

- (vi) Should any clarification, determination, action or inaction by City of Sausalito or Architect/Engineer, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor and City of Sausalito will make good faith attempts to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven (7) Calendar Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and cost proposal for the Disputed Work with City of Sausalito stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of Contract Documents. If a written notice and cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this paragraph 12.2.A, Contractor shall waive its rights to further claim on the specific issue.
- (vii) City of Sausalito will review Contractor's timely notice and cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Contract Documents, it shall so notify City of Sausalito, in writing, within seven (7) Calendar Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. Within thirty (30) Calendar Days of receiving the decision, Contractor shall submit its claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within seven (7) Calendar Days and all justifying documentation within thirty (30) Calendar Days will result in Contractor waiving its right to the subject claim. If Disputed Work persists longer than thirty (30) Calendar Days, then Contractor shall, every thirty (30) Calendar Days until the Disputed Work ceases, submit to City of Sausalito a document titled "Claim Update" that shall update and quantify all elements of the claim as completely as possible. Claims or Claim Updates stating that damages, total damages (direct and indirect), schedule input and/or any time extension will be determined at a later date shall not comply with this paragraph 12.2.B. All disputed work shall be tracked on a time and material basis (T & M), approved daily by the Project Inspector, totaled with complete costs and submitted weekly to the City of Sausalito's Representative.

- (viii) Claims shall be calculated in the same manner as Change Orders per **Section 01250 (Modification Procedures)**. Except where provided by law or elsewhere in these contract documents (if applicable), City of Sausalito shall not be liable for special or consequential damages, and contractor shall not include them in its claims. Contractor shall be limited in its recovery on claims to the change order calculations set forth in **Section 01250 (Modification Procedures)**.

### 3. CLAIM FORMAT

Contractor shall submit the claim justification in the following format:

- 1) Cover letter and certification under penalty of perjury regarding the amount of the claim;
- 2) Summary of claim, including underlying facts, entitlement, CPM schedule analysis, quantum calculations, contract provisions supporting relief;
- 3) List of documents relating to claim including Specifications, Drawings, clarifications/requests for information, schedules, notices of delay, cost records and any other necessary documents;
- 4) Chronology of events and correspondence;
- 5) Analysis of claim merit;
- 6) Analysis of claim cost; and
- 7) Attach supporting documents referenced in Article XII, paragraph 3, section 3) above.
- 8) Time and Material Records.
- 9) Time Impact Evaluations

### 4. EXCLUSIVE REMEDY

Contractor's performance of its duties and obligations specified in this Article and submission of a claim as provided in this Article is Contractor's sole and exclusive remedy for disputes of all types pertaining to the payment of money, extension of time, the adjustment or interpretation of Contract Documents terms or other contractual or tort relief arising from Contract Documents. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or Contract Documents, negligence or strict liability by City of Sausalito, its representatives, consultants or agents, or the transfer of Work or the Project to City of Sausalito for any reason whatsoever. Contractor waives all claims of waiver, estoppels, release, bar, or any other type of excuse for non-compliance with the claim submission requirements. Compliance with the notice and claim submission procedures described in this Article is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. If Contractor fails to raise any claim(s) or issue(s) in a timely protest and timely claim submitted under this Article, then Contractor may not thereafter assert such claim(s) or issue(s) in any Government Code Claim, subsequent litigation, or legal action. City of Sausalito shall not have deemed to waive any provision under this Article, if at City of Sausalito's sole discretion; a claim is accepted in a manner not in accord with this Article.

### 5. MEDIATION

All Contractor claims not subject to the claim resolution procedures set forth in Section 01410 (Regulatory Requirements) shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved Contractor claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

### 6. SUBCONTRACTOR CLAIMS

7. Contractor shall present as its claims all subcontractor, sub-subcontractor and supplier claims of any type, and prove them under the terms of the contract documents. City of Sausalito shall not be directly liable to any subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the project.



**ARTICLE XIII. LEGAL AND MISCELLANEOUS**

**1. LAWS AND REGULATIONS**

- (i) Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify City of Sausalito and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.
- (ii) Contractor shall comply with applicable portions of Title 19 and Title 24, California Code of Regulations, as defined in Contract Documents, Public Contract Code and all applicable codes, laws and regulations. Whenever Drawings and Specifications require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Drawings and Specifications shall govern. Whenever Drawings and Specifications require something that will violate such laws, ordinances, regulations or orders, then such laws, ordinances, regulations or orders shall govern.
- (iii) Contractor shall maintain in the Project Office a current copy of Title 19 and 24 of the California Code of Regulations at all times during construction.

**2. PERMITS AND TAXES**

- (i) Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable), pay all charges and fees, including fees for street opening permits, comply with, implement and acknowledge effectiveness of all permits, initiate and cooperate in securing all required notifications or approvals therefore, and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. City of Sausalito will pay applicable building permits, school, sanitation and water fees, except as otherwise provided in the Contract Documents. If, under federal excise tax law, any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the City of Sausalito, upon request, will execute a certificate of exemption which will certify (1) that the City of Sausalito is a political subdivision of the state for the purpose of such exemption, and (2) that the sale is for the exclusive use of the City of Sausalito. No excise tax for such materials shall be included in any bid price. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where City of Sausalito may have already obtained permits for the Work.

**3. RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION**

- (i) City of Sausalito and each of its officers, employees, consultants and agents including, but not limited to the Board, Architect/Engineer and each City of Sausalito's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- (ii) To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, City of Sausalito and each of its officers, employees, consultants (including without limitation Consulting Architect/Engineer) and agents, including but not limited to the Board, Architect/Engineer and each City of Sausalito's Representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them

or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of City of Sausalito or by any person or entity required to be indemnified hereunder.

- (iii) With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against City of Sausalito and each of its officers, employees, consultants and agents including, but not limited to City of Sausalito, the Board, Architect/Engineer and each City of Sausalito's Representative.
- (iv) Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- (v) To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, City of Sausalito may in its discretion back charge Contractor for City of Sausalito's costs and damages resulting there from and withhold such sums from progress payments or other contract moneys which may become due.

#### 4. CONCEALED OR UNKNOWN CONDITIONS

- (i) If either of the following conditions is encountered at Site when digging trenches or other excavations below the surface, Contractor shall give a written Notice of Differing Site Conditions to City of Sausalito promptly before conditions are disturbed, except in an emergency as required by paragraph 4 of this Section 00700, and in no event later than 24 hours after first observance of:
  - 1) Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
  - 2) Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- (ii) In response to Contractor's Notice of Differing Site Conditions under this paragraph, City of Sausalito, or Architect/Engineer will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, City of Sausalito will issue either a Request for Proposal or a Construction Change Directive under the procedures described in the Contract Documents, including without limitation **Section 01250 (Modification Procedures)**. If City of Sausalito determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, City of Sausalito will so notify Contractor in writing, stating reasons
- (iii) Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if:
  - 1) Contractor knew of the existence of such conditions at the time Contractor submitted its Bid; or
  - 2) Contractor should have known of the existence of such conditions as a result of having complied with the requirements of Contract Documents, including without limitation paragraphs 2i and 8.4 of this Section 00700; or
  - 3) The information or conditions claimed by Contractor to be Latent or materially different consist of information, conclusions, opinions or deductions of the kind that paragraph 2.1 of this Section 00700 precludes reliance upon; or
  - 4) Contractor was required to give written Notice of Differing Site Conditions and failed to do so within the time required.
- (iv) If City of Sausalito and Contractor are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this paragraph 13.4, Contractor shall proceed with the Work as directed by City of Sausalito and may make a claim as provided in Article XII of this Section 00700.

## 5. NOTICE OF HAZARDOUS WASTE OR MATERIALS CONDITIONS

- (i) Contractor shall give a written Notice of Hazardous Materials Condition to City of Sausalito promptly, before any of the following conditions are disturbed (except in an emergency as required by paragraph 4 of this Section 00700), and in no event later than 24 hours after first observance of any:
  - 1) Material that Contractor believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law (“hazardous material”); or
  - 2) Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site (“other materials”).
- (ii) Except as otherwise provided in the Contract Documents or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Contractor complies with all requirements in the Contract Documents and applicable law respecting such materials.
- (iii) Contractor’s Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.
- (iv) Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
  - 1) Contractor knew of the existence of such hazardous materials or other materials at the time Contractor submitted its Bid; or
  - 2) Contractor should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or
  - 3) Contractor failed to give the written notice within the time required by paragraph (i) of this Section 00700.
- (v) If City of Sausalito determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, City of Sausalito will issue either a Request for Proposal or Construction Change Directive under the procedures described in the Contract Documents, including without limitation **Section 01250 (Modification Procedures)**. If City of Sausalito determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, City of Sausalito will notify Contractor in writing, stating the reasons for its determination
- (vi) If City of Sausalito and Contractor are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this paragraph 13.5, Contractor shall proceed with the Work as directed by City of Sausalito and may make a claim as provided in Article Article XII of this Section 00700.
- (vii) In addition to the parties’ other rights under paragraph (v) of this Section 00700, if Contractor does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, City of Sausalito may order the disputed portion of Work deleted from the Work, or performed by others, or City of Sausalito may invoke its right to terminate Contractor’s right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant. If Contractor does not agree with City of Sausalito’s determination of any adjustment in the Contract Sum or Contract Time as a result, Contractor may make a claim as provided in Article Article XII of this Section 00700.

## 6. SUSPENSION OF WORK

- (i) City of Sausalito may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as City of Sausalito may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption,

calculated using the measures set forth in **Section 01250 (Modification Procedures)**. No adjustment shall be made to extent that:

- 1) Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
- 2) An equitable adjustment is made or denied under any other provision of Contract Documents; or
- 3) The suspension of Work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, Contractor may file a claim under Article XII of this Section 00700.

#### 7. TERMINATION OF CONTRACT FOR CAUSE

- (i) City of Sausalito may declare Contractor in default of Contract Documents and City of Sausalito may terminate Contractor's right to proceed under the Contract Documents for cause:
  - 1) Should Contractor make an assignment for the benefit of creditors; admit in writing its inability to pay its debts as they become due; file a voluntary petition in bankruptcy; be adjudged a bankrupt or insolvent; be the subject of an involuntary petition in bankruptcy which is not dismissed within sixty (60) Calendar Days; file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; file any answer admitting or not contesting the material allegations of a petition filed against Contractor in any such proceeding; or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Contractor or of all or any substantial part of its properties or if Contractor, its directors or shareholders, take action to dissolve or liquidate Contractor; or
  - 2) Should Contractor commit a material breach of the Contract Documents. If City of Sausalito declares Contractor in default due to material breach, however, City of Sausalito must allow Contractor an opportunity to cure such breach within ten (10) Workdays of the date of notice from City of Sausalito to Contractor providing notice of the default; or, if such breach is curable but not curable within such ten-Day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Contractor to avail itself of a time period in excess of ten (10) Workdays, Contractor must provide City of Sausalito within the ten-Day period with a written plan acceptable to City of Sausalito to cure said breach which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to cure the breach. Contractor must then diligently commence and continue such cure according to the written plan); or
  - 3) Should Contractor violate or allow (by a Subcontractor or other person or entity for which Contractor is responsible) a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure (or cause to be cured) such violation within ten (10) Workdays of the date of the notice from City of Sausalito to Contractor demanding such cure; or, if such violation is curable but not curable within such ten-Day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Contractor to avail itself of a time period in excess of ten (10) Workdays, Contractor shall provide City of Sausalito within the ten-Day period with a written plan to cure said violation acceptable to City of Sausalito, and then diligently commence and continue performance of such cure according to the written plan.)
- (ii) If City of Sausalito at any time reasonably believes that Contractor is or may be in default under the Contract Documents as provided in paragraph 13.7.A of this Section 00700, City of Sausalito may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of Contract Documents and a written plan from Contractor to remedy any default under the terms of Contract Documents which City of Sausalito may advise Contractor of in writing. Contractor shall, within ten (10) Workdays of City of Sausalito's request, deliver a written cure plan which meets the requirements of the written plan deliverable under paragraph 13.7.A.2 of this Section 00700. Failure of Contractor to provide such written assurances of performance and the required written plan, within ten (10) Workdays of request, will constitute a material breach of Contract Documents sufficient to justify termination for cause.
- (iii) In event of termination for cause, City of Sausalito will immediately serve written notice thereof upon Surety and Contractor. Surety shall have the rights and obligations set forth in Section 00610 (Construction Performance Bond). Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default there

under), City of Sausalito may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.

- (iv) In the event of termination by City of Sausalito as provided in paragraph (i) of this Section 00700 for cause:
- 1) City of Sausalito will compensate Contractor for the value of the Work delivered to City of Sausalito upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and back charges, and provided that Contractor provides City of Sausalito with updated as-built drawings and Project Record Documents showing the Work performed up to the date of termination. However, City of Sausalito will not compensate Contractor for its costs in terminating the Work or any cancellation charges owed to third parties.
  - 2) Contractor shall deliver to City of Sausalito possession of the Work in its then condition including, but not limited to, all designs, engineering, Project records, Project Record Documents, cost data of all types, Drawings and Specifications and contracts with vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this paragraph 13.7.D shall not be interpreted to diminish any right which City of Sausalito may have to claim and recover damages for any breach of Contract Documents or otherwise, but rather, Contractor shall compensate City of Sausalito for all loss, cost, damage, expense, and/or liability suffered by City of Sausalito as a result of such termination and failure to comply with Contract Documents.
  - 3) City of Sausalito's rights under paragraph 13.7.D.2 shall be specifically enforceable to the greatest extent permitted by law. City of Sausalito shall, to the extent applicable, have all other rights and remedies set forth in any Bidding Document.
- (v) City of Sausalito may terminate portions or parts of the Work for cause, provided these portions or parts (1) have separate geographic areas from parts or portions of the Work not terminated or (2) are limited to the work of one or more specific trades or Subcontractors. In such case, Contractor shall cooperate with a completing contractor as required under Article 6 of this Section 00700.
- (vi) In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have the recovery rights specified in paragraph 13.8. Any Contractor claim arising out of a termination for cause, however, shall be made in accordance with Article 12 of this Section 00700. No other loss cost, damage, expense or liability may be claimed, requested or recovered by Contractor.

#### 8. TERMINATION OF CONTRACT FOR CONVENIENCE

- (i) City of Sausalito may terminate performance of the Work under the Contract Documents in accordance with this Article 13.8 in whole, or from time to time in part, whenever City of Sausalito shall determine that termination is in City of Sausalito's best interest. Termination shall be effected by City of Sausalito delivering to Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
- (ii) After receiving a notice of termination under paragraph (i) of this Section 00700, and except as otherwise directed by City of Sausalito, Contractor shall:
- 1) Stop Work under the Contract Documents on date and to extent specified in notice of termination;
  - 2) Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
  - 3) Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
  - 4) Assign to City of Sausalito in manner, at times, and to extent directed by City of Sausalito, all right, title, and interest of Contractor under orders and subcontracts so terminated. City of Sausalito shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
  - 5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of City of Sausalito to extent City of Sausalito may require. City of Sausalito's approval or ratification shall be final for purposes of this paragraph;

- 6) Transfer title to City of Sausalito, and deliver in the manner, at the times, and to the extent, if any, directed by City of Sausalito, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to City of Sausalito;
  - 7) Use its best efforts to sell, in manner, at times, to extent, and at price or prices that City of Sausalito directs or authorizes, any property of types referred to in paragraph Article XIII(ii)6) of this Section 00700, but Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by City of Sausalito. Proceeds of transfer or disposition shall be applied to reduce payments to be made by City of Sausalito to Contractor under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as City of Sausalito may direct;
  - 8) Complete performance of the part of the Work which was not terminated by the notice of termination; and
  - 9) Take such action as may be necessary, or as City of Sausalito may direct, to protect and preserve all property related to Contract Documents which is in Contractor's possession and in which City of Sausalito has or may acquire interest.
- (iii) After receipt of a notice of termination under paragraph 13.8A of this Section 00700, Contractor shall submit to City of Sausalito its termination claim, in form and with all certifications required by Article XII of this Section 00700. Contractor's termination claim shall be submitted promptly, but in no event later than thirty (30) Calendar Days from effective date of the termination. Contractor and City of Sausalito may agree upon the whole or part of the amount or amounts to be paid to Contractor because of a total or partial termination of Work under this paragraph 8. If Contractor and City of Sausalito fail to agree on the whole amount to be paid to Contractor because of the termination of the Work under this paragraph 8, City of Sausalito's total liability to Contractor by reason of the termination shall not exceed the total (without duplication of any items) of:
- 1) The reasonable cost to Contractor for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values of the contract sum as derived from the progress schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, payments made, and for other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of ten percent of direct costs of such Work. When, in City of Sausalito's, its Representative or the Architect/Engineer's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.
  - 2) A reasonable allowance for profit on cost of Work performed as determined under paragraph Article XIII(iii)1) of this Section 00700, provided that Contractor establishes to City of Sausalito's satisfaction that Contractor would have made a profit had the Project been completed, and provided further that the profit allowed shall not exceed 5 percent of cost.
  - 3) Reasonable costs to Contractor of handling material returned to vendors, delivered to City of Sausalito or otherwise disposed of as directed by City of Sausalito.
  - 4) Except as provided in this paragraph 13.8.C of this Section 00700, City of Sausalito shall not be liable for costs incurred by Contractor or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Contractor's Bid, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.
  - 5) City of Sausalito shall have no obligation to pay Contractor under this paragraph 8 unless and until Contractor provides City of Sausalito with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.

- (iv) In arriving at the amount due Contractor under this clause, there shall be deducted in whole (or in the appropriate part(s) if the termination is partial):
  - 1) All unliquidated advances or other payments on account previously made to Contractor, including without limitation all payments applicable to the terminated portion of Contract Documents;
  - 2) Any claim which City of Sausalito may have against Contractor in connection with Contract Documents; and
  - 3) The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold under provisions of this paragraph 8, and not otherwise recovered by or credited to City of Sausalito.

#### 9. CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- (i) Contractor hereby assigns to City of Sausalito each Subcontract for a portion of the Work, provided that:
  - 1) The assignment is effective only after City of Sausalito's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to paragraphs 7 or 8 of this Section 00700.
  - 2) The Assignment is effective only for the Subcontracts which City of Sausalito expressly accepts by notifying the Subcontractor in writing;
  - 3) The assignment is subject to the prior rights, if any, of the Surety, obligated by Section 00610 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
  - 4) After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in paragraphs 7 or 8 of this Section 00700), sign all instruments and take all actions reasonably requested by City of Sausalito to evidence and confirm the effectiveness of the assignment in City of Sausalito; and
  - 5) Nothing in this paragraph 9 shall modify or limit any of Contractor's obligations to City of Sausalito arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

#### 10. REMEDIES AND CONTRACT INTEGRATION

- (i) Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter-claims, disputes and other matters in question between City of Sausalito and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State of California, County of Marin. All City of Sausalito remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances City of Sausalito shall have any and all other equitable and legal rights and remedies which it would have according to law.
- (ii) The Contract Documents, any Contract Modifications and Change Orders shall represent the entire and integrated agreement between City of Sausalito and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written modifications. City of Sausalito and Contractor represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.
- (iii) In any proceeding to enforce the Contract Documents, Contractor and City of Sausalito agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.
- (iv) Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's

right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

#### 11. PATENTS

Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid price for doing the Work. Contractor shall defend, indemnify and hold harmless City of Sausalito and each of its officers, employees, consultants (including without limitation Consulting Architect/Engineer) and agents, including, but not limited to, the Board and each City of Sausalito's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnity or ordered by a court or administrative body of any competent jurisdiction.

#### 12. SUBSTITUTION FOR PATENTED AND SPECIFIED ARTICLES

Except as noted specifically in Specifications, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or equal" and Contractor may offer any substitute material or process that Contractor considers equal in every respect to that so designated and if material or process offered by Contractor is, in opinion of City of Sausalito, equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting Section 00660 (Substitution Request Form) as provided in Section 00200 (Instructions to Bidders). A substitution will be approved only if it is a true "equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule and design.

#### 13. INTEREST OF PUBLIC OFFICERS

No representative, officer, or employee of City of Sausalito, no member of the governing body of the locality in which the Project is situated, no member of the locality in which City of Sausalito was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

#### 14. LIMIT OF LIABILITY

City of Sausalito, and each of its officers, board members, employees, consultants and agents including, but not limited to, architect/engineer each other City of Sausalito representative shall have no liability to contractor for special, consequential, or incidental damages, except to the limited extent that these contract documents or applicable public contracting statutes may specify their recovery.

#### 15. SEVERABILITY

Any provisions or portions thereof of Contract Documents that are prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract Documents.

### ARTICLE XIV. **MODIFICATIONS OF CONTRACT DOCUMENTS**

#### 1. ALTERATIONS, MODIFICATIONS AND FORCE ACCOUNT WORK

- (i) As provided in the latest edition of Part 1 of Title 24, California Code of Regulations, no modification or deviation from the Drawings and Specifications will be permitted except by written addenda, written Change Order or



- written Supplemental Instruction. As appropriate, Change Orders are subject to approval by the Architect. Refer to section 4-338, Part 1, Title 24, California Code of Regulations.
- (ii) City of Sausalito may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. As appropriate, such Change Orders are subject to approval by the Architect. Refer to Section 4-338, Part 1, Title 24, California Code of Regulations. In the case of any ordered extra Work, Owner reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such City of Sausalito-furnished labor, materials, and equipment.
  - (iii) Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order that shall specify:
    - 1) The Work performed in connection with the change to be made;
    - 2) The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
    - 3) The extent of the adjustment in the Contract Time, if any.
  - (iv) A Change Order will become effective when signed by the Architect and the City of Sausalito. If City of Sausalito exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 and 14 of this Section 00700, then the resulting Change Order shall be effective when signed by the Architect and the City of Sausalito, notwithstanding that Contractor has not signed it.
  - (v) Changes not affecting the Contract Time or Contract Sum of the Work, in City of Sausalito's discretion, may be set forth in a written RFI-Reply executed by Architect/Engineer. Execution of such an RFI-Reply constitutes Contractor's agreement to make the specified change without change to the Contract Sum or the Contract Time.
  - (vi) Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in **Section 01250 (Modification Procedures)**, except in cases of emergency discussed in Article 16 of this Section 00700.
  - (vii) If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract Documents shall be increased or decreased by the amount that Contractor, The Architect and the City of Sausalito may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then Architect will reach a determination, which shall be final, subject to Contractor's rights under Article Article XII of this Section 00700. In all cases Contractor shall perform the changed Work as directed by the Architect and the City of Sausalito subject to Contractor's rights under Article Article XII of this Section 00700.
  - (viii) Contractor shall, upon City of Sausalito's request, permit inspection of the original unaltered Bid estimate, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its cost proposal or claims arising from changes in the Work.
  - (ix) Changes in the Work made pursuant to this Article 14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guaranties and warranties given by Contractor pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
  - (x) Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in **Section 01250 (Modification Procedures)**. Regarding delay and impact costs of any nature, Contractor may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichlay" or other formula. Rather, Contractor shall prove actual costs resulting from such delays. If Contractor requests compensation for delay to the construction, then Contractor shall prove and document actual costs plus markup per the cost categories and procedures in **Section 01250 (Modification Procedures)** in order to request, claim or prove compensation for delay.
  - (xi) Change Orders in excess of City of Sausalito's approved limit must be approved by the City of Sausalito's City Council and a performance bond rider covering the changed Work executed before proceeding with the changed

Work. Contractor is charged with knowledge of City of Sausalito's approved Change Order limits and procedures in effect at the applicable time.

**ARTICLE XV. TIME ALLOWANCES**

**1. TIME ALLOWANCES FOR PERFORMANCE OF CONTRACT DOCUMENTS**

- (i) When Contractor and City of Sausalito have signed the Contract Documents, City of Sausalito will serve a Notice to Proceed upon Contractor to that effect, either by depositing notice in a post office or post office box regularly maintained by United States Postal Service in a pre-paid wrapper directed to Contractor at legal address or (at City of Sausalito's option) by delivery by other means at legal address
- (ii) The start date for Contract Time shall be on the date indicated in the applicable Notice to Proceed. The total number of Calendar Days for completion of the Work under the Contract Documents shall be as provided in Section 00520 (Agreement).

**2. ENTITLEMENT TO CHANGE OF CONTRACT TIME**

- (i) The Contract Time may only be changed by Change Order or by Contract Modification, and all time limits stated in the Contract Documents are of the essence of Contract Documents.
- (ii) The Contract Time will be adjusted in an amount equal to the time lost due to:
  - 1) Changes in the Work ordered by City of Sausalito and/or the Architect/Engineer;
  - 2) Acts or neglect by City of Sausalito, Architect/Engineer, any City of Sausalito's Representative, utility owners or other contractors performing other work, provided that Contractor has fully and completely performed its responsibilities under the Contract Documents; or
  - 3) Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this paragraph, earthquakes, civil or labor disturbances, strikes or acts of God, provided damages resulting there from are not the result of Contractor's failure to protect the Work as required by Contract Documents.
- (iii) The Contract Time shall not be extended for any cause identified above, however, unless:
  - a) Contractor actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Contractor's control and due to reasons for which Contractor is not responsible (delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Contractor);
  - b) A claim for delay is made as provided herein; and
  - c) Contractor submits a Time Impact Evaluation as required under **Section 01310 (Project Management and Coordination)** that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.
- (iv) Where Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of both City of Sausalito and Contractor (including, but not limited to, adverse weather of all types and acts of other contractors or utilities), an extension of Contract Time, in an amount equal to the time lost due to such delay (without compensation), shall be Contractor's sole and exclusive remedy for such delay.
- (v) Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions that fall within the parameters listed in this paragraph. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds these parameters on a monthly basis and Contractor proves that adverse weather actually caused delays. Contractor shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring. Rain parameters are as follows, pro-rated in the individual month Contractor starts and finishes Work:
  - January, [8]; February, [5]; March, [6]; April, [3]; May, [1]; June, [0]; July, [0]; August, [0]; September, [0]; October, [2]; November, [5]; and December, [6].
- (vi) In order to qualify as an adverse weather delay with respect to the foregoing parameters, daily rainfall must exceed 0.5 of an inch or more at the **Sausalito**, California station, as measured by the National Oceanic & Atmospheric Administration, and Contractor shall prove that the rain actually caused delay as set forth in this Section 00700.

- (vii) Contractor shall include the foregoing rain parameters as a monthly activity in its progress schedule. As Work on the critical path is affected by rain, Contractor shall notify City of Sausalito and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float.
- (viii) Adverse weather delay for rain shall be recognized for the actual period of time Contractor proves it was delayed by rain exceeding the specified parameters. For example, and not by way of limitation, if rain exceeding the specified parameters does not in fact delay Contractor's progress on the critical path, then no time extension shall be recognized; and conversely, if Contractor proves that rain exceeding the specified parameters causes delay to Contractor for a period longer than the number of rain days incurred (e.g., if it rains during grading work), then Contractor shall be entitled to a time extension equal to the actual period of such delay.
- (ix) Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for City of Sausalito to not grant a time extension due to adverse weather, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.

### 3. NOTICE OF DELAY

Within seven (7) Calendar Days of the beginning of any delay, Contractor shall notify City of Sausalito in writing, by submitting a notice of potential claim, of all anticipated delays resulting from the delay event in question. Any request for extension of time shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event, and shall include a written schedule document that demonstrates delay to the critical path using a Time Impact Evaluation as specified in Section 01310 (Progress Schedules). City of Sausalito will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph.

### 4. TIME EXTENSIONS AND/OR DAMAGES ENTITLEMENTS FOR DELAYS

- (i) Contractor may receive a time extension and be compensated for delays caused directly and solely by City of Sausalito.
- (ii) Contractor may receive a time extension without compensation for delays resulting in whole or in part from causes beyond the reasonable control of Contractor and City of Sausalito, e.g. adverse weather conditions exceeding Contract Documents parameters, earthquakes, Acts of God and epidemics. In such cases, a time extension without compensation shall constitute Contractor's sole and exclusive remedy for such delays.
- (iii) Contractor shall not be entitled to any time extension or compensation including, but not limited to, extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by Contractor's failure to perform its obligations under the Contract Documents, or during periods of delay concurrently caused by Contractor and either City of Sausalito or others.
- (iv) Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:
  - 1) City of Sausalito's right to sequence the Work in a manner which would avoid disruption to City of Sausalito's tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of Contractor's failure to perform its cooperation and coordination responsibilities required by Contract Documents; City of Sausalito's enforcement of any government act or regulation; or the provisions of the Contract Documents;
  - 2) Extensive requests for clarifications to Contract Documents or Contract Modifications thereto, provided such clarifications or Contract Modifications are processed by Architect/Engineer and the City of Sausalito or its consultants in a reasonable time commensurate with Contract Documents requirements.

### 5. LIQUIDATED DAMAGES

- (i) Time is of the essence. Execution of Contract Documents by Contractor shall constitute acknowledgement by Contractor that Contractor understands, has ascertained and agrees that City of Sausalito will actually sustain damages in the amount fixed in the Contract Documents for each and every Calendar Day during which completion of Work required is delayed beyond expiration of time fixed for completion or extensions of time

allowed pursuant to provisions hereof. Contractor and City of Sausalito agree that specified measures of liquidated damages shall be presumed to be the damages actually sustained by City of Sausalito as defined below, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

- (ii) Liquidated damages shall be considered not as a penalty but as monetary damage sustained by City of Sausalito for increased Project administration expenses, including extra inspection, construction management and architectural and engineering expenses related to the Project and Contract Documents because Contractor failed to perform and complete Work within time fixed for completion or extensions of time allowed pursuant to provisions hereof. Liquidated damages shall not be deemed to include within their scope additional damages or administrative costs arising from Defective Work, interest expenses, cost of completion of the Work, claims and fines of regulatory agencies, damages suffered by others or other forms of liability claimed against City of Sausalito as a result of delay (e.g., delay or delay related claims of other contractors, subcontractors or tenants), and defense costs thereof. Contractor shall be fully responsible for the actual amount of any such damages it causes, in addition to the liquidated damages otherwise due City of Sausalito.
- (iii) City of Sausalito may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages. Should Contractor fall behind the approved Progress Schedule, City of Sausalito may deduct liquidated damages based on its estimated period of late completion. City of Sausalito need not wait until Final Completion to withhold liquidated damages from Contractor's progress payments. Should money due or to become due to Contractor be insufficient to cover aggregate liquidated damages due, then Contractor forthwith shall pay the remainder of the assessed liquidated damages to City of Sausalito.

#### ARTICLE XVI. **WORKING CONDITIONS AND PREVAILING WAGES**

##### 1. USE OF SITE/SANITARY RULES

- (i) All portions of the Work shall be maintained at all times in neat, clean and sanitary condition.
- (ii) Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by City of Sausalito, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the owner or occupant thereof resulting from the performance of Work.
- (iii) During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by City of Sausalito at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- (iv) Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

##### 2. PROTECTION OF WORK, PERSONS, PROPERTY AND OPERATIONS

- (i) Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. Contractor shall comply with all safety requirements specified in any safety program established by City of Sausalito, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all damage to Work, property or structures, all injuries to persons, and all damage and interruptions to City of Sausalito's operations, arising from the performance of Work of the Contract Documents. Except as otherwise expressly approved by City of Sausalito in writing, Contractor shall at all times perform all

Work in a manner which does not interrupt, damage or otherwise adversely impact any existing City of Sausalito facilities or operations.

- (ii) Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- (iii) Contractor shall remedy all damage, injury, loss or interruption to any property or operations referred to in this Section 00700, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. City of Sausalito and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work. This requirement shall include the protection of stored materials from damages caused by weather, excessive moisture, pests, insects and other detriments that may be reasonably prevented and mitigated.
- (iv) Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- (v) City of Sausalito may, at its option, retain such moneys due under the Contract Documents as City of Sausalito deems necessary until any and all suits or claims against Contractor for injury to persons, property or operations shall be settled and City of Sausalito receives satisfactory evidence to that effect.

### 3. RESPONSIBILITY FOR SAFETY AND HEALTH

- (i) Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and City of Sausalito's safety regulations as amended from time to time. Contractor shall comply with all City of Sausalito directions regarding protective clothing and gear.
- (ii) Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify City of Sausalito, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard.
- (iii) Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed: City of Sausalito designated routes for ingress and egress thereto and any other City of Sausalito designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

### 4. EMERGENCIES

- (i) In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from City of Sausalito, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by City of Sausalito. Contractor shall give City of Sausalito prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If City of Sausalito determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action. Emergency contact names & phone numbers are to be provided to the City of Sausalito, within 10 days after issuance of a Notice to Proceed.

5. USE OF ROADWAYS AND WALKWAYS

- (i) Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with City of Sausalito's prior concurrence, Contractor may provide detour or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

6. NONDISCRIMINATION

- (i) No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Section 12940 of the Government Code. Every contractor for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

7. PREVAILING WAGES

- (i) Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the Work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and City of Sausalito to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.
- (ii) Contractor shall be assessed penalties by the City of Sausalito and monies will be withheld from contract payments commensurate with the severity of the violations, for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Section 00700 and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by City of Sausalito. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- (iii) Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- (iv) Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code Section 1813.

8. ENVIRONMENTAL CONTROLS

- (i) Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any work performed under the Contract Documents including, without limitation, any toxic, water and soil pollution controls and air pollution controls specified in Government Code, Section 11017 and as required by Bay Area Air Quality Management District water quality (Best Management practices) and other applicable requirements. Contractor shall be responsible for insuring that Contractor's employees, Subcontractors and the public are protected from exposure to airborne hazards or contaminated water, soil or other toxic materials used during or generated by activities on the Site or associated with the Project.

9. SHORING SAFETY PLAN

- (i) At least five (5) Workdays in advance of excavating any trench five feet or more in depth, Contractor shall submit to Architect/Engineer and City of Sausalito a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- (ii) During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. Architect/Engineer's or City of Sausalito's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Contractor of its responsibilities under this paragraph.

END OF SECTION

**SECTION 00800  
SUPPLEMENTARY CONDITIONS**

1. SUMMARY

This document includes requirements that supplement the paragraphs of Section 00700 (General Conditions).

2. SUPPLEMENTS (NOT USED)

END OF SECTION



SECTION 00805  
SUPPLEMENTARY CONDITIONS - HAZARDOUS MATERIALS

1. SUMMARY

- (i) This Section 00805 includes requirements that supplement the paragraphs of Section 00700 (General Conditions) and Section 01100 (Summary of Work) as they apply to location, removal, remediation, disposal, and abatement of hazardous materials and hazardous waste.

2. SUPPLEMENTS

- (i) Supplement to paragraph 2.1, Investigation Prior to Bidding
  - 1) Add to the end of paragraph 2.1.B a new paragraph that reads:
  - 2) 4. Matters Shown in Hazardous Materials Surveys for Informational Purposes: Reference is made to Section 00335 (Hazardous Materials Surveys) for hazardous material surveys included with the Contract Documents and use of data therein. These materials are not Contract Documents and, except for any “technical data” regarding the location of hazardous materials, as limited in Section 00335 (Hazardous Materials Surveys), Contractor shall not in any manner rely on the information in these materials. Subject to the foregoing, Contractor shall make its own independent investigation of all conditions affecting the Work and shall not rely on information provided by City of Sausalito or its consultants.
- (ii) Supplement to paragraph 5.7, Precedence of Documents
  - 1) Add to the end of paragraph 5.7 a new paragraph that reads:
    - a) 5.7.E Should any provision or requirement of any Contract Document conflict with another provision or requirement in the Contract Documents on subject matters of hazardous waste abatement, clean up, disposal, or required safety standards or methods, then the most stringent provision or requirement shall control.
- (iii) Supplement to paragraph 7.2, Means and Methods of Construction
  - 1) Number the current paragraph 7.2.A and add to the end of paragraph 7.2 a new paragraph that reads:
    - a) 7.2.B Nothing contained in these Contract Documents or inferable there from shall be deemed or construed to:
      - i) Make Contractor the agent, servant, or employee of City of Sausalito; or
      - ii) Create any partnership, joint venture, or other association between City of Sausalito and Contractor.
- (iv) Supplement to paragraph 8, Control of the Work
  - 1) Add to the end of paragraph 8.2 new paragraphs that read:
  - 2) 8.2.F City of Sausalito shall exercise administration on Contract Documents. City of Sausalito has employed a consultant to assist in the preparation of the hazardous materials abatement contract specifications. City of Sausalito reserves the right to assign or delegate to this consultant, or any other consultant (“Consultant”) any or all Architect/Engineer’s responsibilities under Contract Documents or alternatively to act as City of Sausalito’s representative. Contractor will be notified in writing of any such delegation.
  - 3) 8.2.G Cooperate with Consultant as directed by City of Sausalito. Consultant’s duties may include observing Contractor’s health and safety program and practices, observing the abatement construction activities, observing the extent of material removed from each job site, reviewing payment requests, reviewing reports required by governmental or quasi-governmental agencies or Contract Documents, and providing clearance tests after abatement is completed. No action, omission to act, approval, or failure to advise Contractor as to any matter by Consultant shall in any way relieve Contractor from its responsibility for the performance of Work in accordance with Contract Documents and applicable law. Unless directed otherwise in writing by City of Sausalito, do not communicate directly with Consultant and shall direct all communications to City of Sausalito.
- (v) Supplement to paragraph 9, Warranty, Guaranty, and Inspection of Work
  - 1) Add to the end of paragraph 9.1 a new paragraph that reads:
  - 2) 9.1.D Additional Warranties and Representations:
    - i) Contractor represents and warrants that it, its employees and its Subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training and ability to comply

- fully with all applicable law and Contract Documents requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to adequately address the actual or potential dangers of Contract performance).
- ii) Contractor represents and warrants that it, its employees and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.
  - iii) Contractor represents and warrants that it has studied carefully all requirements of the Contract Documents regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract Documents, and prior to submitting its Bid, has either:
    - a. Verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by Contract Documents; or
    - b. By way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by Contract Documents.
  - iv) Contractor accepts the risk that any specified procedure will result in a completed Project in full compliance with all Contract Documents requirements.
- 3) Number the current paragraph 9.6.A and add to the end of paragraph 9.6 a new paragraph that reads:
- i) 9.6.B City of Sausalito reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, work monitoring, and any other tests (in addition to testing required under Section 00520 [Agreement] or applicable Law), to monitor Contract requirements of safe and statutory compliant work methods and (where applicable) safe re-entry level air standards under state and federal Law upon completion of the Work, and compliance of the Work with periodic and final inspection of public and quasi-public entities having jurisdiction.
  - ii) Contractor acknowledges that City of Sausalito also has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement and post-abatement air monitoring, provided that City of Sausalito shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of Work by Contractor. In the event City of Sausalito elects to perform these activities and tests, afford City of Sausalito ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Include the potential impact of these activities for tests by City of Sausalito in the Contract Sum and the scheduled completion date.
  - iii) Notwithstanding City of Sausalito's rights granted by this paragraph 9, Contractor may be required to retain its own industrial hygiene consultant and shall have primary responsibility for collecting samples and performing all applicable, relevant, or appropriate activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, required by Contract Documents, applicable Law, or both, and City of Sausalito reserves the right to request documentation of all such activities and tests performed by Contractor relating to Work.
- (vi) Supplement to paragraph 11.2, Cost Data
- 1) Add to the end of paragraph 11.2 new paragraphs that read:
  - 2) 11.2.E Obtain and maintain and shall furnish to City of Sausalito on completion of Work or at any other time requested by City of Sausalito, all necessary, permits, licenses, approvals, authorizations, notifications, training certificates, respirator certificates, reports, correspondence, tests results, air monitoring certificates, forms, medical records, medical certificates, notes and photographs of Work conditions, approved shipping and disposal facility receipts, manifests, and all other documentation required by Contract Documents or applicable Law, or both.
  - 3) 11.2.F Provide City of Sausalito with copies of each such document as it is generated and shall, as a condition to final payment, provide City of Sausalito with a complete set of such documents (bound, organized, and indexed) at the conclusion of Work. Keep and maintain in retrievable files true and correct copies of all such documents for a period of not less than 30 years after Final Completion of the Work. City of Sausalito shall have the right to inspect or photocopy these records and, if Contractor should cease business operations, then it shall furnish these records to City of Sausalito.
  - 4)
- (vii) Supplement to paragraph 13, Legal and Miscellaneous

- 1) Add to the end of paragraph 13.1 new paragraphs that read:
- 2) 13.1.C Compliance with Laws. Contractor represents that it is familiar with and shall comply with all Laws applicable to the Work or completed Work including, but not limited to all Laws relating to:
  - i) Protection of the public health, welfare, and environment;
  - ii) Generation, processing, treatment, handling, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum-based products, or other hazardous materials of any kind; or
  - iii) Protection of environmentally sensitive areas such as wetlands.
- 3) 13.1.D Disposal. Contractor has the sole responsibility for determining current waste storage, handling, and transportation and disposal regulations for the Site and for each waste disposal facility. Contractor shall comply fully at Contractor's sole cost and expense with these regulations and any applicable Law. City of Sausalito may, but is not obligated to, require submittals with this information for it to review consistent with Contract Documents.
- 4) 13.1.E Tracking. Contractor shall develop and implement a system acceptable to City of Sausalito to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the applicable EPA form, so that City of Sausalito may track the volume of waste Contractor puts in each landfill and receive from each landfill a certificate of receipt. Manifests are to be signed by the Contractor, and originals submitted to the Project Manager.
- 5) 13.1.F Facilities. Contractor shall provide City of Sausalito with the name and address of each waste disposal facility prior to any disposal, and City of Sausalito shall have the express right to reject any proposed disposal facility. Contractor may not use any disposal facility to which City of Sausalito has objected. Contractor shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction and forwarding the original to the Contractor (with a copy to City of Sausalito).
- 6) Number the text of current paragraph 13.2 paragraph 13.2.A and add to the end of paragraph 13.2 new paragraphs that read:
- 7) 13.2.B Before performing any of the Work, and at such other times as may be required by applicable Law, deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Submit evidence satisfactory to City of Sausalito that Contractor and any disposal facility (a) have obtained all required permits, approvals and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable Law, and (b) are in compliance with all such permits, approvals and the like. For example, before commencing any work in connection with the Work involving asbestos-containing materials or PCB subject to regulation, Contractor shall provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt required, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to City of Sausalito. Contractor shall not conduct any Work involving asbestos-containing materials or PCB unless Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds required by governmental or quasi-governmental authorities, fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities necessary for the prosecution of the Work shall be procured and paid for by Contractor. Contractor shall give all notices and comply with the Law bearing on the conduct of the Work as drawn and specified. If Contractor observes or reasonably should have observed that Drawings and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying City of Sausalito in writing of such fact. If Contractor performs any Work contrary to Law without such notice to City of Sausalito, Contractor shall bear all costs arising there from.
- 8) In the case of any permits or notices held in City of Sausalito's name or of necessity to be made in City of Sausalito's name, City of Sausalito will cooperate with Contractor in securing the permit or giving the notice, but Contractor shall prepare for City of Sausalito's review and execution upon approval, all necessary applications, notices, and other materials.
- 9) Add to the end of paragraph 13.3 a new paragraph that reads:
- 10) 13.3.G To the greatest extent permitted by Law, the indemnities and limitation of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes liabilities

connected to the selection and use of a waste disposal facility, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or “disposal” and “release” of materials associated with the Work (as defined in 42 U.S.C. Section 9601 *et seq*).

- 11) Add to the end of paragraph 13.7 a new paragraph that reads:
  - 12) 13.7.G Notwithstanding anything in paragraph 13.7 to the contrary, City of Sausalito shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should Contractor knowingly or recklessly commit a material breach of the terms of the Contract Documents or the Law on any matter involving the exposure of persons or property to hazardous waste. If the breach exposing persons or property to hazardous waste is due solely to an ordinary, unintentional and non-reckless failure to exercise reasonable care, then the procedures in paragraph 13.7 for termination for default shall apply without modification.
- (viii) Supplement to paragraph 16.2, Protection of Work, Persons, and Property
- 1) Add to the end of paragraph 16.2 a new paragraph that reads:
  - 2) 16.2.F Perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the Law (as herein defined), and the Contract Documents including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the Law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.

END OF SECTION

**SECTION 00821**  
**INSURANCE**

1. AT OR BEFORE THE DATE SPECIFIED IN DOCUMENT 00200 (INSTRUCTIONS TO BIDDERS), CONTRACTOR SHALL FURNISH TO CITY OF SAUSALITO SATISFACTORY PROOF THAT CONTRACTOR HAS TAKEN OUT FOR THE ENTIRE PERIOD COVERED BY THE CONTRACT THE FOLLOWING CLASSES OF INSURANCE IN THE FORM AND WITH LIMITS AND DEDUCTIBLES SPECIFIED BELOW:
  - 1) Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a standard Commercial General Liability Insurance policy (“Occurrence Form”). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion of the last Phase to be completed and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse and underground hazards. The limits of such insurance shall be not less than **[\$1,000,000]** each occurrence, **[\$1,000,000]** general aggregate limit, and **[\$1,000,000]** aggregate for products and completed operations. The policies shall be endorsed to provide Broad Form Property Damage Coverage.
  - 2) Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than **[\$1,000,000]** each person Bodily Injury, **[\$1,000,000]** each occurrence Bodily Injury, and **[\$1,000,000]** each occurrence Property Damage.
  - 3) All-Risk Course of Construction Insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, damage to adjacent buildings, partial or total collapse of structure(s), debris removal, demolition occasioned by enforcement of Laws, water damage, and damage caused by frost and freezing, in the amount of 100 percent of the completed value of the Work to be performed under this Contract. Each loss shall be borne by Contractor.
  - 4) Workers’ Compensation Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as “Workers’ Compensation Insurance and Safety Act,” approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount. Employers Liability Limit shall be not less than **[\$1,000,000]**.
- (ix) All policies of insurance shall be placed with insurers acceptable to City of Sausalito. The insurance underwriter(s) must have an A. M. Best Company rating of **[A-IX]** or better. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of City of Sausalito, warrant such increase. Contractor shall increase required insurance amounts upon direction by City of Sausalito.
- (x) Required Endorsements: The policies required under paragraphs A.1), A.(viii)2) and A.3 of this Document 00700 shall be endorsed as follows:
- (xi) Name City of Sausalito, its City Council, and its employees, representatives, consultants, agents, volunteers, and Architect/Engineer as additional insured, but only with respect to liability arising out of the activities of the Named Insured.
- (xii) Each such policy shall apply separately to each insured against which claim is made or suit is brought, except with respect to the limit of the insurance company’s liability required under paragraphs A.1), A.(viii)2) and A.3 of this Document 00821.
- (xiii) Insurance shall be primary and no other insurance or self-insured retention carried or held by City of Sausalito shall be called upon to contribute to a loss covered by insurance for the named insured.
- (xiv) Insurance shall contain a provision requiring the insurance carriers to waive their rights of subrogation against City of Sausalito and all additional insured, as well as other insurance carriers for the Work
- (xv) Insurance certificates shall be addressed to: City of Sausalito, 420 Litho St., Sausalito, CA 94965.

- (xvi) Certificates of insurance and endorsements shall have clearly typed thereon City of Sausalito Bid Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to City of Sausalito (Attention: Project Manager) at the address listed in Document 00520 (Agreement), 60 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Contractor shall maintain insurance in full force and effect during entire period of performance of Contract Documents. Contractor shall keep insurance in force during warranty and guarantee periods, except that Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon City of Sausalito's request, Contractor shall submit to City of Sausalito, within 30 Days, copies of the actual insurance policies or renewals or replacements.
- (xvii) Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insured. If Contractor fails to maintain insurance, City of Sausalito may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.
- (xviii) If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from City of Sausalito under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from City of Sausalito, City of Sausalito may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If City of Sausalito is compelled to pay compensation, City of Sausalito may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse City of Sausalito.
- (xix) Nothing in this Document 00821 shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- (xx) All Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work, and Contractor shall cause the Subcontractors to furnish proof thereof to City of Sausalito within ten Days of City of Sausalito's request.
- (xxi) The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work ("Professional").  
Each Professional shall maintain the following insurance at its sole cost and expense:
- a) Provided such insurance is customarily required by City of Sausalito when professionals engaged in the profession practiced by Professional directly contract with City of Sausalito, Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's work on the Project, with a limit of not less than **[\$1,000,000]** for each claim. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.
  - b) All insurance required by paragraphs A.1, A.2 and A.4 of this Document 00821. Professional shall satisfy all other provisions of paragraphs A, B, C, D, E and F of this Document 00821 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.
- (xxii) If required by City of Sausalito, Contractor shall obtain and maintain Contractor's Pollution Legal Liability Insurance in a form, with limits, and from an insuring entity reasonably satisfactory to City of Sausalito.

END OF SECTION

SECTION 00822  
Apprenticeship Program

Contractor and Subcontractors shall comply with the requirements of California Labor Code Sections 1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

Section 1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one hour of apprentices work for every five hours of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:

- A. When unemployment for the previous three-month period in the area exceeds an average of 15 percent;
- B. When the number of apprentices in training in the area exceeds a ratio of one to five;
- C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
- D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

END OF SECTION