



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Martin Luther King Park – Landslide Correction Improvements

### RECOMMENDED ACTION:

Award Construction Contract to Northwest Demolition, Inc.

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### SUMMARY

On July 24, 2008 the City solicited bids to repair two landslides at MLK Park.

Three bids were received on August 21, 2008. The low bid of \$135,900.26 was submitted by Northwest Demolition, Inc for 12 inch diameter anchors. The Engineer's Estimate for the project was \$128,765.

Staff recommends the City Council adopt a resolution awarding a contract to Northwest Demolition, Inc.

### BACKGROUND

In 1996, two dormant slides became active resulting in earth debris flows into the MLK Park Site. Geotechnical investigation determined that structures should be installed to support the embankment to prevent further earth movement and to shore lands underlying adjacent residential private property, known as the Terraces Condominiums.

The City and the Terraces HOA have been involved in on-going discussion about the repair of the landslides which occurred on the hillside located "above" the MLK buildings on property owned by both parties. In approximately 2002 these discussions focused in large part on causation. Subsequently discussions turned to a mutual desire to come up with an approach to fixing the hillside without apportioning blame.

In April, 2007 the parties agreed to have plans prepared for the potential repair and to split the costs of preparation of Phase I Geotechnical analysis and Structural Engineering plans and specifications. The Terraces HOA paid the City \$9000 for this purpose.

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A detailed construction plan was prepared by Alan Hories and Joseph Michelucci to install soil anchors and to reconstruct slough walls. The project was advertised for bids on July 24, 2008. Bids were opened on August 21, 2008. Three bids were submitted.

State contract requirements and Sausalito Purchasing Policy mandate that a contract be awarded to the lowest responsible bidder. Northwest Demolition Inc. is a responsible bidder.

The Engineer's Estimate for the entire project is \$128,765. The low bid was \$135,900 for repairs utilizing 12 inch diameter earth anchors. An alternate bid of \$141,200.33 was submitted for 8 inch anchors.

The work will be done in a land formation known as the Franciscan Formation. It is highly irregular in structure. As such there is greater than average risk that costs could be exceeded. Staff believes that a contingency amount of 25% should be added to deal with differing conditions. Staff recommends total construction funding authorization limit of \$169,875.

The 2009 Budget includes a supplemental Budget Request for the Repair Project in the amount of \$117,000 which is broken down as follows:

- 1,000 Internal design
- 10,000 External design
- 100,000 Construction
- 3,000 internal construction engineering
- 3,000 external construction engineering

The City has been negotiating with the Terraces Home Owners Association and their insurance carriers regarding sharing costs. The Council will be discussing the terms of a cost sharing agreement with the Terraces HOA in closed session as it includes the settlement of existing/potential claims.

Additionally there will be costs for structural and geotechnical inspection. Staff recommends that \$12,000 be authorized for these services by Alan Horeis and Michelucci & Associates.

## **FISCAL IMPACT**

The total cost of the project with the 25% contingency and the inspection fees is \$181,875. There is a supplemental budget request of \$117,000. Staff recommends that the Council authorize the appropriation of funds from the MLK Fund in the amount of \$117,000 and that those funds be utilized to fund the City's share of the construction costs and the inspections fees - not to exceed the following amounts:

- 64.3% or \$109,229.00 of the construction costs including the 25% contingency
- 64.3% or \$7,716.00 for additional inspections

The payment of these funds and the award of the contract will be contingent upon the City entering into an agreement with the Terraces HOA regarding the funding of the repairs.

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A purchase order requisition is not attached to this report as the Council needs to approve the appropriation before a requisition can be prepared.

### STAFF RECOMMENDATIONS

Adopt a resolution:

1. Authorizing the City Manager to execute a contract with Northwest Demolition, Inc. for MLK Park Landslide Correction Improvements, July 2008 conditioned upon the execution of a cost sharing agreement with the Terraces HOA.
2. Authorizing total construction funding at \$169,875 with the City payment in an amount not to exceed 64.3% or \$109,229.00
3. Authorizing the City Manager to amend its agreement with Alan Horeis, Structural Engineer to fund Structural Engineering Services (Construction Inspection) in an amount not to exceed \$6,000 with the City payment in an amount not to exceed 64.3% or \$3,858.00
4. Authorizing the City Manager to amend agreement with Michelucci and Associates to fund Geotechnical Engineering Service (Construction Inspection) in an amount not to exceed \$6,000 with the City payment in an amount not to exceed 64.3% or \$3,858.00

### ATTACHMENTS

1. Award Resolution
2. Contract
3. Bid Tabulation

PREPARED BY:



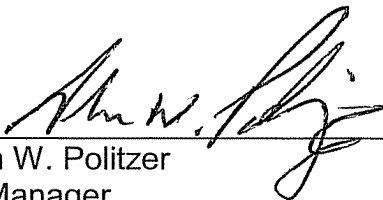
Todd Teachout  
City Engineer

REVIEWED BY (Department Head):



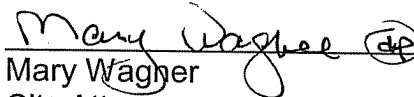
Vacant  
Director of Public Works

SUBMITTED BY:



Adam W. Politzer  
City Manager

REVIEWED BY:



Mary Wagner  
City Attorney

**RESOLUTION \_\_\_-08**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO AWARDING A CONTRACT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENT TO CONSTRUCT MLK PARK LANDSLIDE CORRECTION IMPROVEMENTS**

**WHEREAS**, the City Council adopted the 2009 Annual Budget which included a Supplemental Budget request to partially fund the repair of two landslides at MLK Park, and

**WHEREAS**, the City of Sausalito is negotiating with the Terraces Homeowners Association to fund the remaining construction costs to repair the two landslides at MLK Park, and

**WHEREAS**, pursuant to California Contract Code requirements and purchasing procedures described in Chapter 3.30 of the Sausalito Municipal Code the City prepared plans and specifications to repair said streets, and

**WHEREAS**, the City received three sealed bids which were opened and publicly read, and

**WHEREAS**, Northwest Demolition, Inc. submitted a low bid for \$135,900.26, and

**WHEREAS**, it is prudent to authorize an additional twenty five percent (25%) contingency funding (\$33,975) for unforeseen matters.

**WHEREAS**, it is necessary to hire inspection services to assure compliance with structural engineering design and geotechnical engineering recommendations.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Sausalito:

1. The City Manager is authorized to execute an agreement with Northwest Demolition, Inc. for construction of MLK Park Landslide Correction Improvements, July 2008, subject to completion of settlement negotiations with Terraces Homeowners Association.
2. Authorizing total construction funding at \$169,875 which consists of up to \$109,229 from MLK Fund Supplemental Request authorization
3. Authorizing the City Manager to amend the agreement with Alan Horeis, Structural Engineer to fund Structural Engineering Services (Construction Inspection) in an amount not to exceed \$6,000 with up to \$3858 from the MLK Fund Supplemental Request Authorization
4. Authorizing the City Manager to amend the agreement with Michelucci and Associates to fund Geotechnical Engineering Services (Construction Inspection) in an amount not to exceed \$6,000 . with up to \$3858 from the MLK Fund Supplemental Request Authorization

AYES: Councilmembers:  
NOES: Councilmembers:

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ABSTAIN: Councilmembers:

\_\_\_\_\_  
Mayor, City of Sausalito

ATTEST:

\_\_\_\_\_  
City Clerk

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**CITY OF SAUSALITO PUBLIC WORKS  
CONSTRUCTION AGREEMENT  
for**

**MLK Park Landslide Correction Improvements  
(Title of Project)**

THIS CITY OF SAUSALITO PUBLIC WORKS CONSTRUCTION AGREEMENT (this "Agreement") is entered into and effective as of the 2nd day of September in the year 2008, by and between the City of Sausalito, a municipal corporation ("City") and Northwest Demolition, Inc. ("Contractor"). City and Contractor may be referred to individually herein as a "Party" and collectively as the "Parties".

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

**ARTICLE 1. WORK**

Contractor shall complete the work as described and/or depicted in **Exhibit A** ("Work"), attached hereto and incorporated by reference herein, upon the terms and conditions set forth herein.

**ARTICLE 2. CONTRACT PRICE /PAYMENT**

- A. City shall pay Contractor the aggregate sum of One hundred thirty five thousand nine hundred and 26/100 Dollars (\$135,900.26), for the full and satisfactory completion of the Work in accordance with the terms and conditions of this Agreement ("Contract Price").

**ARTICLE 3. INSURANCE**

Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, Contractor's agents, representatives and employees.

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
  2. Insurance Services Office form number CA 0001 (ed. 12/90) covering automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.

3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Contractor shall sign a declaration as described in California Health and Safety Code Section 19825.
4. Builders all risk insurance.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Worker's Compensation and Employer's Liability: in amounts required by law.
4. Builder's All Risk: Amount equal to 100% of the contract price bid; \$25,000 deductible allowed

C. Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, employees and volunteers, or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The Commercial General Liability, Automobile Liability and Builders all risk policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its elected and appointed officials, officers, employees and volunteers are to be covered as additional Insureds as respects: liability arising out of work or operations as performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. The Worker's Compensation endorsement shall contain a Waiver of Subrogation against the City. The Contractor shall provide to the City an endorsement from the

Worker's Compensation insurer, if any, agreeing to waive all rights of subrogation against the City for injuries to employees of the Insured resulting from work for the City or use of the City's premises or facilities.

- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- F. Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements effective coverage required by this clause. The endorsements shall be on ACORD® industry standard forms found acceptable by the City. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- G. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

#### **ARTICLE 4. BONDS/CONTRACTOR'S GUARANTEE**

- A. A labor and materials (payment) bond is x required / \_\_\_ not required for this Agreement. If required for this Agreement, before beginning the Work, Contractor shall provide a labor and materials bond in the amount of one hundred percent (100%) of the Contract Price, and which conforms with the requirements of Civil Code section 3248, as may be amended from time to time.
- B. A performance bond is x required / \_\_\_ not required for this Agreement. If required for this Agreement, before beginning the Work, Contractor shall provide a performance bond in the amount of one hundred percent (100%) of the Contract Price to guarantee faithful performance of the Work.
- C. Contractor shall guarantee the Work to be free of defects in material and workmanship for a period of one (1) year following the City's acceptance of the Work ("Contractor's Guarantee"). As part of Contractor's Guarantee, Contractor agrees to make, at Contractor's own expense, any repairs or replacements made necessary by defects in material or workmanship which become evident within the one-year guarantee period. The Contractor's Guarantee is effective regardless of whether or not a maintenance bond is required by the City for this Agreement.
- D. A maintenance bond is x required / \_\_\_ not required for this Agreement. If required for this Agreement, prior to acceptance of the Work, Contractor shall provide a maintenance bond in the amount of ten percent (10%) of the Contract Price as a security for the Contractor's Guarantee. The maintenance bond shall remain in force for one (1) year following the City's acceptance of the Work.



- E. Any and all bonds required for this Agreement shall be in a form acceptable to the City. Any such bond must be issued by a corporate surety which is an admitted surety insurer in the State of California. Any bond signed by an agent must be accompanied by a certified copy of such agent's authority to act. If the surety on any bond provided by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, Contractor shall, within seven (7) days thereafter, substitute another bond and surety in accordance with the requirements set forth herein.

#### **ARTICLE 5. CONTRACT DOCUMENTS**

The contract documents which comprise the entire agreement between City and Contractor consist of this Agreement and exhibits thereto and the following ("Contract Documents"):

- City-approved specifications and/or drawings for the Work;
- Any written amendment or change order approved by the City after the effective date of this Agreement;
- Any bonds required pursuant to Article 5 of this Agreement;
- **Other:** \_\_\_\_\_.

**The Contract Documents may only be amended by prior written authorization of the City Manager, or his designee.**

#### **ARTICLE 6. LIQUIDATED DAMAGES**

- A. City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the time specified in City approved specifications, plus any extensions previously authorized in writing by the City Manager, or his designee. It is and will be difficult and/or impossible to ascertain and determine the actual damage which City will sustain in the event of and by reason of Contractor's failure to fully perform the Work or to fully perform all of its Contract obligations that have accrued by the time for completion as specified in Article 2 herein and/or as specified for completion of any scheduled operations or works described in the Contract Documents. It is agreed in accordance with California Government Code Section 53069.85, as may be amended from time to time, that Contractor will forfeit and pay to City liquidated damages in the sum specified in the City Approved Specifications for each and every calendar day that expires after the time for completion specified in the City approved specifications except as otherwise provided by extension of time previously authorized in writing by the City Manager or his/her designee. It is further understood and agreed in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time this contract was made, and that City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due to Contractor.

- B. Liquidated damages will continue to accrue at the stated rate until final completion of the Work. Accrued liquidated damages may be deducted by City from amounts due or that

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become due to Contractor for performance of the Work. Liquidated damages may not be waived or reduced by City unless expressly waived or reduced in writing by the City Manager or his designee.

#### ARTICLE 7. PREVAILING WAGES

- A. Pursuant to California Labor Code Section 1771, Contractor and any subcontractor shall pay all workers employed in execution of the Work in accordance with the general rate of per diem wages specified for each craft, classification, or type of worker needed to execute the Work. Copies of the prevailing rates of per diem wages are on file at the Recording Secretary's office, and shall be made available to any interested party on request.
- B. Contractor is required to pay all applicable penalties and back wages in the event of violation of prevailing wage law, and Contractor and any subcontractor shall fully comply with California Labor Code Section 1775, which is incorporated by this reference as though fully set forth herein.
- C. Contractor and any subcontractor shall maintain and make available for inspection payroll records as required by California Labor Code Section 1776, which is incorporated by this reference as though fully set forth herein. Contractor is responsible for ensuring compliance with this section.
- D. Contractor and any subcontractor shall fully comply with California Labor Code Section 1777.5, concerning apprentices, which is incorporated by this reference as though fully set forth herein. Contractor is responsible for ensuring compliance with this section.
- E. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under this Agreement. Contractor and any subcontractor shall pay workers overtime pay as required by California Labor Code Section 1815. Contractor and any subcontractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more that 8 hours in any one calendar day and 40 hours in any one calendar week in violation so the provisions of Article 3 of Chapter 1 of Part 7, Division 2 of the California Labor Code, which is incorporated by this reference as though fully set forth herein.

#### ARTICLE 8. INDEMNIFICATION

Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless to the full extent permitted by law, City and its elected and appointed officials, officers, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Work or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the

active negligence, sole negligence or willful misconduct of the City. Pursuant to California Public Contract Code Section 9201, City shall timely notify Contractor of receipt of any third-party claim relating to this Agreement.

#### **ARTICLE 9. DISCLAIMER CONCERNING LABOR CODE SECTION 6400**

Contractor understands and agrees that with respect to performance of the Work, and notwithstanding any provision in this Agreement to the contrary, Contractor, and/or its privities, including, without limitation, subcontractors, suppliers and other engaged by Contractor in the performance of the Work shall be “employers” for purposes of California Labor Code Section 6400 and related provisions of law, and that neither City nor its officials, officers, employees, agents, volunteers or consultants shall be “employers” pursuant to California Labor Code Section 6400.

#### **ARTICLE 10. TERMINATION**

Notwithstanding any other provision set forth herein, City may terminate or suspend this Agreement immediately for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Contractor, including, without limitation, a breach of any of Contractor’s covenants, representations or guarantees provided herein. Upon receipt of notice of termination or suspension, Contractor shall immediately stop all work in progress under this Agreement. Without limiting the generality of the foregoing, City may terminate this Agreement if Contractor fails to perform the Work within the time specified in Article 2, or any written extension thereof. If City terminates this Agreement for cause, City may undertake to have the Work completed by its own workforce or by substitution of contractor, and Contractor shall be liable to City for any excess cost incurred by City as a result. In the event of such termination, Contractor shall be entitled to payment for all Work performed to date of termination to the extent such services were actually performed in accordance with this Agreement. Upon termination, any and all of City’s documents or materials provided to Contractor and any and all of Contractor’s documents and materials prepared for or relating to this Agreement shall be delivered to the City as soon as possible, but not later than ten (10) days after the cessation of the Work.

#### **ARTICLE 11. INDEPENDENT CONTRACTOR**

It is understood and agreed that in the performance of this Agreement, Contractor (including its employees and agents) is acting in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor has full control over the means and methods of performing said services and is solely responsible for its acts and omissions, including the acts and omissions of its employees and agents.

#### **ARTICLE 12. LICENSES/PERMITS**

Contractor represents that Contractor has all licenses, permits, or qualifications which are legally required for Contractor to perform the Work. Contractor shall, at Contractor’s sole cost and expense, keep in effect at all times during the term of this Agreement, any such licenses, permits or qualifications. By execution of this contract, contractor is granted necessary encroachment permit for work in the public right-of-way. **Contractor is required to possess a current City of Sausalito Business License and to require any sub-contractor to also hold such a license.**

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**ARTICLE 13. INSPECTION**

All Work done and materials furnished, if any, shall be subject to inspection and approval by the City.

**ARTICLE 14. SUBCONTRACTORS**

Contractor must obtain the City's prior written consent for subcontracting any Work pursuant to this Agreement, including safety orders under Title 8 of California Code of Regulations. Any such subcontractor shall comply, to the extent applicable, with the terms and conditions of this Agreement. Any agreement between Contractor and a subcontractor pursuant to this Agreement shall provide that the subcontractor procure and maintain insurance coverage as required herein and which shall name City as an additional insured.

**SECTION 15. WARRANTY**

Contractor agrees to perform all work under this Contract in accordance with the City's designs, drawings and specifications.

Contractor guarantees for a period of at least one (1) year from the date of substantial completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that Contractor shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. The City shall promptly give notice to the Contractor of observed defects. In the event that the Contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, the City may do so and charge the Contractor the cost incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

Contractor's obligations under this clause are in addition to the Contractor's other express or implied assurances under this Contract or state law and in no way diminish any other faulty materials, equipment or work.

**ARTICLE 16. COMPLIANCE WITH LAWS/NON-DISCRIMINATION**

Contractor shall comply with all applicable local, state and federal laws, regulations and ordinances in the performance of this Agreement. Contractor shall not discriminate in the provision of service or in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any applicable local, state or federal laws or regulations.

**ARTICLE 17. NOTICES**

All notices required or permitted by this Agreement, including notice of change of address, shall be in writing and given by personal delivery or sent postage prepaid and addressed to the parties

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intended to be notified, as set forth herein. Notice shall be deemed given as of the date of delivery in person or as of the date deposited in any post office or post office box regularly maintained by the United States Postal Service, unless otherwise stated herein. Notice shall be given as follows:

**City:**

**Attn:** \_\_\_\_\_

**City of Sausalito**

**420 Litho Street**

**Sausalito, California 94965**

**Contractor:**

\_\_\_\_\_

**[Contact Name]**

\_\_\_\_\_

**[Business Name]**

\_\_\_\_\_

**[Address]**

\_\_\_\_\_

**[City, State, Zip]**

\_\_\_\_\_

**[Telephone]**

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**ARTICLE 18. GOVERNING LAW/VENUE**

This Agreement shall be construed and its performance enforced under California law. Venue shall be in the Superior Court of the State of California in the County of Marin.

**SECTION 19. ATTORNEYS' FEES**

If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which it may be entitled. If any action is brought against the Contractor or any subcontractor to enforce a Stop Notice or Notice to Withhold, which names the City as a party to said action, the City shall be entitled to reasonable attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the City. The City shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

**ARTICLE 20. NON-WAIVER**

The City's failure to enforce any provision of this Agreement or the waiver of any provision in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

**ARTICLE 22. THIRD PARTY BENEFICIARIES**

The Parties do not intend, by any provision of this Agreement, to create in any third party any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

**ARTICLE 23. ASSIGNMENT**

No assignment in transfer in whole or in party of this Agreement shall be made without the prior written consent of City.

**ARTICLE 24. SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise enforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**ARTICLE 25. HEADINGS**

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

IN WITNESS WHEREOF, City and Contractor have caused this Agreement to be executed the day and year first above written.

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FOR CITY OF SAUSALITO

FOR CONTRACTOR

\_\_\_\_\_  
Adam W. Politzer  
City Manager

By \_\_\_\_\_  
Name:  
Title:  
Taxpayer I.D. No.: \_\_\_\_\_

Recommended for Approval:

\_\_\_\_\_  
Todd Teachout, City Engineer

APPROVED AS TO FORM:

\_\_\_\_\_  
Mary A. Wagner  
City Attorney

Attachments: Exhibit A – Project Description and  
Exhibit A1- Contractor's Bid Proposal  
Exhibit B - Bond for Faithful Performance  
Exhibit C - Bond for Labor and Materials  
Exhibit D –Maintenance Bond  
Exhibit E - Insurance Certificates  
Exhibit F – Escrow Agreement - Substitution of Securities  
Exhibit G –Resolution of Construction Claims

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## EXHIBIT A

PROJECT DESCRIPTION - The work to be performed under this contract consists of modification of the existing soldier pile-wood lagging retaining walls via the addition of tie-backs and increasing the effective height of the lower portion of the walls and the removal of all loose soil and slide debris down to existing bedrock.

The Project Plans are entitled "Sausalito MLK Park Retaining Wall" from Alan R. Horeis Structural Engineers, Inc. dated September 11, 2007 and modified May 1, 2008.

The Project Specifications are either included in the Project Plans and/or Special Provisions.

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EXHIBIT B

**BOND FOR FAITHFUL PERFORMANCE**

We, the undersigned \_\_\_\_\_ ("Contractor") and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of California, as Surety, are obligated to the City of Sausalito ("City") a municipal corporation under the laws of the State of California, in the sum of \_\_\_\_\_ Dollars (\$) ) for the payment of which sum we obligate ourselves and our successors and assigns, jointly and severally by the following provisions:

The condition of this obligation is that the obligated Contractor has, on \_\_\_\_\_, 2008, entered into a written Agreement with the City for Project No. \_\_\_\_\_ entitled \_\_\_\_\_, a true and correct copy of which is presently on file in the office of the City Clerk of the City of Sausalito, and incorporated herein by reference.

Now, therefore, if the Contractor shall faithfully perform the work in accordance with the plans, specifications and contract documents during the original term, and any extensions of the contract which may be granted by the City, with or without notice to the surety, and if it shall satisfy all claims and demands incurred under the contract, and shall fully indemnify and save harmless the City from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the City all outlay and expense which the City may incur in making any default, then this obligation shall be void; otherwise to remain in full force and effect.

If any legal action be filed upon this bond, it shall be filed within one year after final payment has been made under the contract excluding the warranty period, if any, provided for in the contract, and venue shall lie in the County of \_\_\_\_\_, State of California, and that surety, for value received stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed under it or the specifications accompanying it shall in any way affect its obligation on this bond, and it does by this means waive notice of any change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications, and thereby waives the provisions of Section 2819 of the Civil Code of the State of California.

In witness, contractor and surety have executed this agreement as of \_\_\_\_\_, 2008.

(Contractor)  
By:

(Surety)  
By:

Title:

Address of Surety:  
Surety's Bond Number:

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(Accompany this bond with Attorney-in-fact's authority from Surety to execute the bond, certified to include the date of the bond.)

**CERTIFICATE OF ACKNOWLEDGEMENT**

State of California

City / County of \_\_\_\_\_ SS

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_\_\_ before me  
\_\_\_\_\_, personally appeared

\_\_\_\_\_, personally known to

*Attorney-in-fact*

me (or proved to me on the basis of satisfactory evidence) to be the person whose name is  
subscribed to this instrument as the attorney-in-fact of

\_\_\_\_\_ and acknowledged to me that he/she  
subscribed the name of the said company thereto as surety, and his/her own name as attorney-  
in-fact.

(SEAL)

\_\_\_\_\_  
Notary Public

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EXHIBIT C

**BOND FOR LABOR AND MATERIALS**

We, the undersigned \_\_\_\_\_, ("Principal") and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of California, as Surety, are obligated to the City of Sausalito ("City"), a municipal corporation under the laws of the State of California, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which sum we obligate ourselves and our successors and assigns, jointly and severally by the following provisions:

The condition of this obligation is that the Principal entered into a written Agreement with the City dated \_\_\_\_\_, 2008, for Project No. \_\_\_\_\_ entitled \_\_\_\_\_, a true and correct copy of which is presently on file in the office of the City Clerk of the City of Sausalito, and incorporated herein by reference.

Because Principal is required to furnish a bond in connection with the contract, providing that if Principal, or any of its subcontractors, shall fail to pay for any materials, or other supplies, or for any work or labor on the contracted work of any kind, or for amounts due under the unemployment insurance act with respect to any work or labor on this project, the Surety on this bond, will pay for the debt, in an amount not exceeding the sum specified in this bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee to be fixed by the court.

Now therefore, we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are obligated to the City of Sausalito, in the sum of \$ \_\_\_\_\_, lawful money of the United States, for the payment of which sums will and truly to be made, we the Principal and Surety bind ourselves, successors and assigns, jointly and severally, by these provisions.

The condition of this obligation is that if Principal, its successors or assigns, or its subcontractor, or subcontractors, shall fail to pay for any labor, materials, or other supplies, used in the performance of the work contracted to be done, or for amounts due under the unemployment insurance act with respect to this work or labor, then the Surety on this bond will pay for them, in an amount not exceeding the sum specified in this bond, and in case suit is brought upon this bond will also pay a reasonable attorney's fee, to be fixed by the court.

No prepayment or delay in payment and no changes, extensions, addition or alteration of any provision of the contract or in any plans and specifications referred to herein, and no forbearance on the part of the City shall operate to release the Surety from liability on this bond, and consent to make such alterations without further notice to or consent by the Surety is hereby given, and the Surety hereby waives the provisions of Section 2819 of the Civil Code of the State of California.

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In witness, the parties have executed this agreement as of \_\_\_\_\_, 2008.

(Principal)

By:

Title:

(Surety)

By:

Address of Surety:

Surety's Bond Number:

(Accompany this bond with Attorney-in-fact's authority from Surety to execute the bond, certified to include the date of the bond.)

**CERTIFICATE OF ACKNOWLEDGEMENT**

State of California, City of Sausalito

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me  
\_\_\_\_\_, a notary public in and for the City of Sausalito,  
personally appeared \_\_\_\_\_, known to me to be the  
person whose

*Attorney-in-fact*

name is subscribed to this instrument and known to me to be the attorney-in-fact of  
\_\_\_\_\_ and acknowledged to me that he/she subscribed the name of the said  
company thereto as surety, and his/her own name as attorney-in-fact.

(SEAL)

\_\_\_\_\_  
Notary Public

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EXHIBIT D

**BOND FOR MAINTENANCE**

We, the undersigned \_\_\_\_\_, ("Principal") and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and authorized to transact business in the State of California, as Surety, are obligated to the City of Sausalito ("City"), a municipal corporation under the laws of the State of California, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which is 10% of the contract price and for which sum we obligate ourselves and our successors and assigns, jointly and severally by the following provisions:

The condition of this obligation is that the Principal entered into a certain written Contract with the City dated \_\_\_\_\_, 2008 and entitled \_\_\_\_\_ Project \_\_\_\_\_ for a one year maintenance period of the work described in the Contract, a true and correct copy of which is presently on file in the office of the City Clerk of the City of Sausalito, which agreement is hereby referred to and made a part hereof. The City requires a guarantee from the Principal against defective materials and workmanship in connection with that maintenance.

Now, therefore, the Principal agrees that it shall make all repairs or replacements resulting from defective materials or workmanship during the period of one-year from the date of acceptance of the contract work, which is the date upon which the City Council approves the notice of completion. If those defective materials or workmanship occur within that period, the City shall give the Principal and Surety written notice of that defect within 60 days after discovery. When each replacement is made to the satisfaction of the City, the obligation of the Principal and Surety shall be discharged as to that replacement, otherwise to remain in full force and effect.

Any repairs or replacements made under this bond shall in like manner be subject to the terms and conditions of it.

No prepayment or delay in payment and no changes, extensions, addition or alteration of any provision of the contract or in any plans and specifications referred to herein, and no forbearance on the part of the City shall operate to release the Surety from liability on this bond, and consent to make such alterations without further notice to or consent by the Surety is hereby given, and the Surety hereby waives the provisions of Section 2819 of the Civil Code of the State of California.

In witness, the parties have executed this agreement as of \_\_\_\_\_, 2008.

(Principal)

By:

Title:

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(Surety)

By:

Address of Surety:

Surety's Bond Number:

(Accompany this bond with Attorney-in-fact's authority from Surety to execute the bond certified to include the date of the bond.)

**CERTIFICATE OF ACKNOWLEDGEMENT**

State of California, City of Sausalito

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me  
\_\_\_\_\_, a notary public in and for the City of Sausalito,  
personally appeared \_\_\_\_\_, known to me to be the  
person whose

*Attorney-in-fact*

name is subscribed to this instrument and known to me to be the attorney-in-fact of  
\_\_\_\_\_ and acknowledged to me that he/she subscribed the name of the said  
company thereto as surety, and his/her own name as attorney-in-fact.

(SEAL)

\_\_\_\_\_  
Notary Public

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EXHIBIT E

INSURANCE CERTIFICATES

EXHIBIT F

Contract No. \_\_\_\_\_  
Escrow Agreement No.

**ESCROW AGREEMENT: SUBSTITUTION OF SECURITIES  
PROGRESS PAYMENTS UNDER PUBLIC WORKS CONTRACTS  
(Gov. Code Sec. 4590)**

The parties to this Agreement are: The City of Sausalito, County of Marin ("CITY" herein);  
and:

\_\_\_\_\_ ("CONTRACTOR" herein), and the  
(name of contractor)

\_\_\_\_\_ ("ESCROW AGENT" herein).  
(name of bank)

**RECITALS**

CITY and CONTRACTOR have entered into a contract for the construction  
of \_\_\_\_\_ Contract No. \_\_\_\_\_

This agreement is made pursuant to the authority of Government Code Section 4590; its  
purpose is to provide for the release to CONTRACTOR of sums which CITY otherwise  
would be required to withhold from progress payment to CONTRACTOR. This agreement  
shall be effective as the date of execution by the parties shown on Page 5.

In consideration of their mutual promises the parties hereto agree as follows:

CONTRACTOR agrees:

1. CONTRACTOR shall deliver initially to ESCROW AGENT, in accordance with the  
provisions of Government Code Section 4590, either or both of the following forms  
of security in the combined amount of not less than: \$ \_\_\_\_\_. If  
less than 5% of the total contract amount, CONTRACTOR shall deposit such  
additional securities as may be required in amounts sufficient to comply with  
paragraphs 3 and 4 of Section I below.
  - (a) securities listed under Government Code Section 16430;
  - (b) certificates of deposit issued by banks authorized to transact business in  
California which are members of the Federal Deposit Insurance Corporation,  
or by savings and loan associations authorized to transact business in  
California which are members of the Federal Savings and Loan Insurance

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Corporation. Non-negotiable certificates of deposit shall be payable to the order of

\_\_\_\_\_  
(name of escrow agent)

as Trustee under their Escrow Agreement  
number \_\_\_\_\_.

2. Any certificates of deposit delivered by CONTRACTOR to ESCROW AGENT, hereunder, shall be accompanied by evidence satisfactory to ESCROW AGENT that the issuing bank or savings and loan company will honor any request for redemption prior to maturity and that payment will be made to ESCROW AGENT without any rights of third parties being permitted to intervene.
3. CONTRACTOR shall maintain on deposit at all times prior to termination of escrow created by this agreement securities as specified in Section I Paragraph (b), above; or a combination of such securities and certificates of deposit having a market value of not less than the amount to be paid to CONTRACTOR under the terms of this agreement.
4. Upon demand of ESCROW AGENT, CONTRACTOR shall deposit with ESCROW AGENT additional securities as defined in Section I, Paragraphs 1 (a) and 1 (b), above, necessary to maintain said deposit as specified above.
5. CONTRACTOR shall pay all charges made by ESCROW AGENT for services rendered by it as such ESCROW AGENT, including but not limited to service fees and out-of-pocket expenses.
6. CONTRACTOR shall pay any escrow charges made by CITY for escrow services performed by CITY.
7. CONTRACTOR shall deposit with ESCROW AGENT such properly executed documents as, in the opinion of ESCROW AGENT, are necessary to enable ESCROW AGENT to sell deposited securities or to redeem certificates of deposit.
8. CONTRACTOR shall pay any and all costs incurred by CITY or ESCROW AGENT, including but not limited to reasonable attorney's fees, in any legal proceedings in any way arising out of or related to this escrow, including but not limited to legal proceedings challenging the right of CITY or ESCROW AGENT to possess or dispose of said securities.
9. CONTRACTOR agrees that CITY may direct ESCROW AGENT to sell securities or redeem certificates of deposit deposited with ESCROW AGENT under the terms of this CONTRACTOR'S default or failure to perform pursuant to the terms of the construction contract.

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II

CITY agrees:

1. CITY shall pay to ESCROW AGENT, in accordance with established CITY procedures, funds which otherwise would be withheld from progress payments pursuant to the requirements of law and in accordance with the contract documents upon receipt of notice from ESCROW AGENT that the following are on deposit with ESCROW AGENT:
  - (a) securities in the form and amount specified in Section I, Paragraph 1, hereof;
  - (b) documents necessary to enable ESCROW AGENT to sell or redeem the deposited securities.
2. CITY shall be obligated to make such payments only if ESCROW AGENT holds securities deposited under the provisions of Section I, Paragraph 1, having a market value of not less than the total amount otherwise normally withheld from the progress payments to be paid to CONTRACTOR under this agreement.

III

ESCROW AGENT agrees:

1. ESCROW AGENT shall hold the securities or certificates of deposit in trust for the benefit of CITY until such time as the escrow created hereunder is terminated.
2. ESCROW AGENT shall obtain from CONTRACTOR such documents as in the opinion of ESCROW AGENT are necessary to enable ESCROW AGENT to sell the securities or to redeem the certificates of deposit deposited hereunder.
3. ESCROW AGENT shall review the market value of securities held in said escrow account monthly at the close of business on the first business day of each month.
4. ESCROW AGENT shall pay to CONTRACTOR moneys paid to ESCROW AGENT by CITY, except that in no event will ESCROW AGENT make any payment to CONTRACTOR if such payment will cause the total amount of payments so made to exceed the value of the securities on deposit with ESCROW AGENT as of the date of such payment.
5. ESCROW AGENT shall promptly, upon receipt of written notice from CITY to do so, sell securities or redeem certificates of deposit and hold proceeds of such sale or redemption for disbursement at the written direction of CITY.
6. ESCROW AGENT shall make no charge to CITY for any services or out-of-pocket expenses incurred in carrying out its duties and obligations under this agreement.
7. ESCROW AGENT shall hold securities as Trustee for CITY as security for payment of money which would otherwise be held by CITY pursuant to the requirements of law, and agrees that the rights of CITY to said securities are superior to any lien (or claim of lien) including but not limited to the right to sell or redeem securities as

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provided in Section I, Paragraph 8, hereof, which ESCROW AGENT claims or may in the future claim against said deposit.

All parties hereto further agree that:

1. CONTRACTOR shall have the right to withdraw or exchange securities from the custody of ESCROW AGENT. Such withdrawal or exchange may be made only if the market value or, in the case of certificates of deposits, face value of securities deposited under the provisions of Section I, Paragraph 1, in the custody of ESCROW AGENT after such withdrawal or exchange equals not less than 100% of total amount paid to CONTRACTOR by ESCROW AGENT under this agreement. ESCROW AGENT shall notify CITY in writing of any such withdrawal or exchange within two business days of such withdrawal or exchange.
2. The total amount of funds to be released to CONTRACTOR pursuant to this escrow agreement, in lieu of being withheld by CITY from progress payments to CONTRACTOR, may be increased during the term of this agreement to 5% of the total contract amount if CONTRACTOR so elects. CONTRACTOR shall deliver to ESCROW AGENT securities as specified in Paragraph 1 having a market value not less than 5% of the total contract amount.
3. This escrow shall terminate and ESCROW AGENT shall return to CONTRACTOR all securities held in its custody promptly upon receipt of written notice from CITY that said securities may be released.
4. CONTRACTOR is the beneficial owner of said securities held by ESCROW AGENT and CONTRACTOR is entitled to receive any and all interest which may be paid thereon.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

CITY OF SAUSALITO

By: \_\_\_\_\_  
City Engineer

"CONTRACTOR"

\_\_\_\_\_  
(Name of Firm)

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

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

"ESCROW AGENT"

\_\_\_\_\_ (Name of Firm) \_\_\_\_\_

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

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IV

All parties hereto further agree that:

1. CONTRACTOR shall have the right to withdraw or exchange securities from the custody of ESCROW AGENT. Such withdrawal or exchange may be made only if the market value or, in the case of certificates of deposits, face value of securities deposited under the provisions of Section I, Paragraph 1, in the custody of ESCROW AGENT after such withdrawal or exchange equals not less than 100% of total amount paid to CONTRACTOR by ESCROW AGENT under this agreement. ESCROW AGENT shall notify CITY in writing of any such withdrawal or exchange within two business days of such withdrawal or exchange.
2. The total amount of funds to be released to CONTRACTOR pursuant to this escrow agreement, in lieu of being withheld by CITY from progress payments to CONTRACTOR, may be increased during the term of this agreement to 5% of the total contract amount if CONTRACTOR so elects. CONTRACTOR shall deliver to ESCROW AGENT securities as specified in Paragraph 1 having a market value not less than 5% of the total contract amount.
3. This escrow shall terminate and ESCROW AGENT shall return to CONTRACTOR all securities held in its custody promptly upon receipt of written notice from CITY that said securities may be released.
4. CONTRACTOR is the beneficial owner of said securities held by ESCROW AGENT and CONTRACTOR is entitled to receive any and all interest which may be paid thereon.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

CITY OF SAUSALITO

By: \_\_\_\_\_  
City Engineer

"CONTRACTOR"  
\_\_\_\_\_  
(Name of Firm)

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

"ESCROW AGENT"  
\_\_\_\_\_  
(Name of Firm) By: \_\_\_\_\_

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

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## EXHIBIT G

### ARTICLE 1.5 Resolution of Construction Claims

[Added Stats 1994 ch 726 § 22 (AB 3069), effective September 21, 1994. Former Article 1.5, also entitled "Resolution of Construction Claims", consisting of §§ 20104-20104.8, was added Stats 1990 ch 1414 § 2 and repealed, operative January 1, 1994, by the terms of § 20104.8.]

#### Section

20104. Application of article; "Public work"; "Claim"  
20104.2. Requirements to submit claim; Agency's response; Dispute by claimant over response; Failure of agency to respond; Inapplicability of article to tort claims  
20104.4 Procedures to resolve claims  
20104.6 Payment of portion of claim which is undisputed; Payment of interest on arbitration award or judgment

#### **§ 20104. Application of Article; "Public work"; "Claim"**

(a)(1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b)(1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B), payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or © an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

Added Stats 1994 ch 726 § 22 (AB 3069), effective September 21, 1994.

#### **Former Sections:**

Former § 20104, similar to the present section, was added Stats 1990 ch 1414 § 2 and repealed, operative January 1, 1994 by the terms of § 20104.8.

Former § 20104 was added Stats 1990 ch 321 § 2, effective July 16, 1990, and renumbered to be § 20103.5 by Stat 1990 ch 1414 § 1.

#### **§ 20104.2. Requirements to submit claim; Agency's response; Dispute by claimant over response; failure of agency to respond; Inapplicability of article to tort claims**

For any claim subject to this article, the following requirements apply:

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a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b)(1) For claims less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c)(1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that the claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code

Added Stats 1994 ch 726 § 22 (AB 3069), effective September 21, 1994.

**Former Sections:**

Former § 20104.2, similar to the present section, was added Stats 1990 ch 1414 § 2, amended Stats 1991 ch 1029 § 1, and repealed, operative January 1, 1994, by the terms of § 20104.8.

**§ 20104.4. Procedures to resolve claims**

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The

(b) mediation process shall provide for the selection within 15 days of both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15 day period, any party may petition the court to appoint the mediator.

(b)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

Added Stats 1994 ch § 22 (AB 3069), effective September 21, 1994.

**Former Sections:**

Former § 20104.4 similar to present selection, was added Stats 1990 ch 1414 § 2, amended Stats 1991 ch 1029 § 2, and repealed, operative January 1, 1994, by the terms of § 20104.8.

§ 20104.8. [Section repealed 1993.] Added Stats 1990 ch 1414 § 2 (AB 4165). Repealed, operative January 1, 1994, its own terms.

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Item #: 60  
Meeting Date: 4/17/07  
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City of Sausalito  
 MLK Park Landslide Correction Improvements  
 Bid Tabulation - Bid Opening 8/21/2008, 2:00P.M.

Item No.	Description	Quantity	Unit	Engineer's Estimate		Northwest Demolition, Inc.		Soil Engineering, Inc.		W.R. Forde Associates	
				Unit Cost	Extended Cost	Unit Cost	Extended Cost	Unit Cost	Extended Cost	Unit Cost	Extended Cost
1	Traffic Control and Construction Signs	1	LS	\$1,000.00	\$1,000.00	\$4,200.00	\$4,200.00	\$1,000.00	\$1,000.00	\$15,000.00	\$15,000.00
2	Mobilization	1	LS	\$5,000.00	\$5,000.00	\$5,650.00	\$5,650.00	\$1,000.00	\$1,000.00	\$12,000.00	\$12,000.00
3	Clearing and Grubbing	1	LS	\$25,000.00	\$25,000.00	\$7,250.00	\$7,250.00	\$3,000.00	\$3,000.00	\$35,000.00	\$35,000.00
4	Earthwork	22.5	CY	\$180.00	\$40,500.00	\$100.00	\$22,500.00	\$100.00	\$22,500.00	\$175.00	\$39,375.00
5	Earth Anchors - 12 inch	138	LF	\$175.00	\$24,150.00	\$613.77	\$84,700.26	\$825.00	\$113,850.00	\$1,300.00	\$179,400.00
6	Wood Lagging	200	SF	\$150.00	\$30,000.00	\$58.00	\$11,600.00	\$90.00	\$18,000.00	\$20.00	\$4,000.00
			Total		\$125,650.00		\$135,900.26		\$159,350.00		\$284,775.00
Alternate 5	Earth Anchors - 8 Inch	287	LF	\$95.00	\$27,265.00	\$313.59	\$90,000.33	\$352.00	\$101,024.00	\$500.00	\$143,500.00
			Alt Total		\$128,765.00		\$141,200.33		\$146,524.00		\$248,875.00

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