

CITY OF SAUSALITO

MARIN COUNTY, CALIFORNIA



Public Works, Engineering Division  
420 Litho Street  
Sausalito, CA 94965  
Phone: (415)289-4100

**CONTRACT DOCUMENTS**

For the Construction  
of the

**PRIORITY 1 SEWER REPLACEMENT PROJECT**

(Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation)

**BID OPENING: Friday June 4, 2010 at 10:00AM**

April 2010

Approved for Construction:

TODD TEACHOUT, P.E.  
CITY ENGINEER

5/3/2010

Date



**BID SET**

COPY NO. \_\_\_\_\_



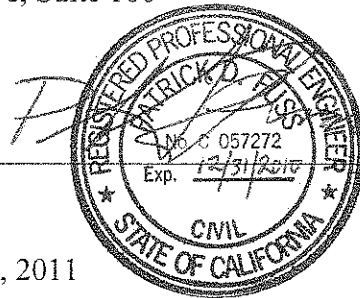
**PRIORITY 1 SEWER REPLACEMENT PROJECT**  
**Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation**

**DESIGN CERTIFICATIONS**

The Plans and Technical Specifications contained herein have been prepared by, or under the responsible charge of, the following registered person(s):

West Yost Associates Consulting Engineers  
2020 Research Park Drive, Suite 100  
Davis, CA 95618

Patrick D. Fuss  
Registration # C57272  
Exp. Date: December 31, 2011



9 Apr: 12010  
Date



## Table of Contents

# PRIORITY 1 SEWER REPLACEMENT PROJECT (Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation)

DIVISION 0	CONTRACT REQUIREMENTS
Section 00010	Notice Inviting Bids [9]
Section 00100	Instructions to Bidders [3]
Section 00200	Information Available to Bidders [2]
Section 00300	Bid Form [3]
Section 00410	Bid Guaranty Bond
Section 00420	Certifications of Bidder's Experience and Qualifications [1]
Section 00430	Designation of Subcontractors
Section 00440	Site Visit Affidavit
Section 00480	Non-Collusion Affidavit
Section 00490	Affidavit of Safety Compliance [1]
Section 00500	Agreement
Section 00610	Bond of Faithful Performance
Section 00620	Payment Bond
Section 00630	Escrow Agreement
Section 00650	General Liability Endorsement (Form A-1)
Section 00651	Auto Liability Endorsement (Form B-1)
Section 00700	General Conditions
Section 00800	Supplementary General Conditions [4]

### TECHNICAL SPECIFICATIONS

DIVISION 1	GENERAL REQUIREMENTS
Section 01010	Summary of Work
Section 01025	Measurement and Payment
Section 01035	Modification Procedures
Section 01050	Field Engineering
Section 01060	Regulatory Requirements and Permits
Section 01090	References
Section 01200	Project Meetings
Section 01300	Submittals
Section 01310	Progress Schedules
Section 01400	Quality Control
Section 01505	Mobilization and Demobilization
Section 01510	Temporary Utilities
Section 01560	Temporary Controls
Section 01580	Material and Equipment
Section 01710	Final Clean-up
Section 01720	Project Record Documents
Section 01740	Warranties and Bonds

DIVISION 2      SITE WORK

Section 02050      Demolition, Salvage and Abandonment  
Section 02080      Sheeting, Shoring and Bracing  
Section 02120      Pressure Pipeline Testing  
Section 02130      Non Pressurized Pipeline Testing  
Section 02140      Control of Groundwater  
Section 02145      Sewer Bypassing and Control  
Section 02160      Site Preparation  
Section 02220      Controlled Low Strength Material  
Section 02300      Earthwork  
Section 02310      Trench Excavation  
Section 02320      Trench Foundation, Bedding and Backfill  
Section 02330      Geotextile Fabrics  
Section 02500      Paving  
Section 02510      Pipelines and Site Piping General  
Section 02605      Utility Structures  
Section 02713      Geotextile Fabric

DIVISION 3      CONCRETE

Section 03301      Cast-In-Place Concrete  
Section 03600      Grout

DIVISION 4 – Not Used

DIVISION 5      METALS

Section 05501      Anchor Bolts

DIVISION 6 – Not Used

DIVISION 7 – Not Used

DIVISION 8      DOOR & WINDOWS

Section 08600      Aluminum Access Hatches

DIVISION 9      FINISHES

Section 09900      Painting  
Section 09960      High-Performance Coatings  
Section 09962      Wetwell Lining

DIVISION 10 – Not Used

DIVISION 11      EQUIPMENT

- Section 11000      General Requirements
- Section 11310      Package Sewage Lift Station
- Section 11315      Submersible Wastewater Pump Accessories

DIVISION 12 – Not Used

DIVISION 13      SPECIAL CONSTRUCTION

- Section 13200      Fiberglass Reinforced Polyester Underground Grease Interceptor Tanks

DIVISION 14 – Not Used

DIVISION 15 – MECHANICAL

- Section 15010      Mechanical Piping General
- Section 15062      Ductile Iron Pipe
- Section 15064      Poly-vinyl Chloride Pipe
- Section 15070      High Density Polyethylene Pipe
- Section 15096      Pipe Hangers and Supports
- Section 15100      Piping Systems
- Section 15130      Piping Appurtenances
- Section 15184      Manual Valve and Gate Operators and Operator Appurtenances
- Section 15190      Eccentric Plug Valves
- Section 15200      Valves and Appurtenances
- Section 15220      Check Valves
- Section 15505      Mechanical Identification

DIVISION 16 – ELECTRICAL

- Section 16010      Electrical

*(THIS PAGE LEFT BLANK INTENTIONALLY)*



## SECTION 00010

### NOTICE INVITING BIDS

Notice is hereby given that sealed bids will be received by the City of Sausalito (City) in their office located at 420 Litho Street, Sausalito, CA 94965, at any time prior to **10:00 AM on Friday June 4, 2010**, for furnishing all labor, materials, equipment, and services for the construction of improvements designated as:

#### **Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation**

Bids will be publicly opened, examined and declared on said day and hour, and will be referred to the City Council for subsequent action.

A pre-bid conference and site visit will be held at **10:00 AM on Wednesday May 19, 2010**, at the offices of the City of Sausalito, 420 Litho Street, Sausalito, CA 94965.

All of said work is to be done in accordance with the Contract Documents, at the places and in the particular locations, of the form, sizes and dimensions and of the materials, and to the lines and grades and at the elevations as shown on the Plans and Specifications made therefore and approved by the City.

The successful Bidder will have the opportunity to enter into a partnering agreement with the City. Partnering consists of a voluntary effort by all parties to develop joint goals and establish a cooperative rather than adversarial atmosphere while executing the Contract. The objective of partnering is effective completion of the work on schedule, within budget, and in accordance with the Contract Documents. Partnering shall commence and be conducted in accordance with industry practice.

Under California Laws and Regulations, the City shall inform all prime contractors of public works, to the extent feasible of relevant public work requirements. Therefore, the City hereby advises all Bidders that the successful Bidder shall:

1. Employ the appropriate number of apprentices on the job site as set forth in California Labor Code 1777.5;
2. Provide worker's compensation coverage, as set forth in California Labor Code Sections 1860 and 1861;
3. Keep and maintain the records of work performed on the public works project, as set forth in California Labor Code Section 1812;
4. Keep and maintain the records required under California Labor Code Section 1776 which shall be subject to inspection pursuant to California Labor Code Section 1776 and California Code of Regulations, Division 1, Chapter 8, Subchapter 3, Article 6, Section 16400 (e); and

5. Be subject to other requirements imposed by law.

Bidders are hereby notified that, pursuant to the provisions of California Labor Code, Sections 1770 et. seq., the City has obtained from the Director of the Department of Industrial Relations, the general prevailing rate of per diem wages and a general prevailing rate for holidays, Saturdays and Sundays, and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker required to execute the Contract. A copy of said prevailing rate of the per diem wage is on file at the offices of the City of Sausalito, 420 Litho Street, Sausalito, CA 94965. Said prevailing rate of per diem wages will be made available to any interested party upon request, and a copy thereof shall be posted at the job site.

The City will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rates on file as aforesaid. The possibility of a wage increase is one of the elements to be considered by the Contractor in determining his/her or its Bid and will not, under any circumstances, be considered as the basis of a claim against the City on the Contract.

Bidders are hereby notified that if the Contract will be entered into or financed by or with the assistance of agencies of the United States, the City must comply with Federal prevailing wage requirements. A copy of the current prevailing rates under Federal law is included in the "Supplementary General Conditions" for this Project if so required by Federal law.

The successful Bidder and its subcontractors shall employ workers which consistently display and demonstrate proper moral, ethical and professional conduct to all fellow workers, employees and representatives of the City and other involved parties.

Pursuant to the provisions of California Labor Code Section 6707, each Bid submitted in response to this Notice to Contractors shall contain, as a Bid item, adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation, which shall conform to applicable safety orders. By listing this sum, the Bidder warrants that its action does not convey tort liability to the City, the Design Consultant, the Construction Manager, and their employees, agents, and subconsultants.

Copies of the Contract Documents are now on file and available for public inspection at the City of Sausalito, 420 Litho Street, Sausalito, CA 94965 where they may be obtained for a non-refundable \$50.00 charge. Contract Documents will be mailed for an additional charge of \$15.00 per set.

Each Bid must conform and be responsive to the invitation, the Plans and Specifications, and all documents comprising the pertinent Contract Documents. Each Bid shall be presented under sealed cover and shall be accompanied by a certified check, cashier's check, cash or bidder's bond, made payable to the City, in an amount not less than ten (10) percent of the Bid. The said check shall be given as a guarantee that the Bidder will execute the Contract in conformity with the form of agreement contained within the Contract Documents, and will furnish bonds and insurance policies as specified within ten (10) days after notification of the award of the Contract to the successful Bidder.

Addenda issued during the time of bidding shall be covered in the Contractor's Bid and shall become part of the Contract Documents.

Bidders shall develop and submit Bids at their own expense. The City will not reimburse any costs associated with the development and submittal of any and all Bids.

The City reserves the sole right to reject any and all Bids and to waive any informality in a Bid.


No Bidder may withdraw its Bid for a period of sixty (60) days after the date set for the opening thereof.

Any Bid protest must be submitted in writing to the City of Sausalito, 420 Litho Street, Sausalito, CA 94965 by 4:30 p.m. of the 5<sup>th</sup> business day following Bid opening. The initial protest document must identify the protestant and contain a complete statement of the basis for the protest with reference to any portion of the Bid documents which the protestant relies on as the basis of the protest. The above time and content requirements are mandatory, and failure to comply therewith shall constitute a waiver of any further right to pursue a Bid protest, including filing a Government Code claim or legal proceedings. Bid protests shall be acted upon by the City Council.

At the successful Contractor's option, securities may be substituted for the required retention, in accordance with the provisions of Section 22300 of the California Public Contract Code.

In accordance with the provisions of California Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid **Class A – General Engineering Contractor** license.

In accordance with the provisions of California Business and Professions Code Section 7028.15, a Bid submitted to the City by a Contractor who is not licensed in accordance with Chapter 9 of the California Business and Professions Code shall be considered non-responsive and shall be rejected by the City.

By:   
Debbie Pagliaro, City Clerk  
City of Sausalito, California

Date: May 3, 2010

**\*\*END OF SECTION\*\***

*(THIS PAGE LEFT BLANK INTENTIONALLY)*

SECTION 00100

INSTRUCTIONS TO BIDDERS

ARTICLE 1 – GENERAL

The work to be performed is described in the Contract Documents titled, **Priority 1 Sewer Replacement Project - Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation** dated April 2010 and prepared by **West Yost Associates** for the City of Sausalito.

All Bidders shall carefully examine the Contract Documents and satisfy themselves as to their sufficiency; and shall not at any time after the submission of the Bid dispute or complain of such Contract Documents and the directions explaining them or interpreting them, nor assert that there is any misunderstanding in regard to the location, extent, nature of amount of work to be performed. The Bidder shall notify the City of any discovered conflicts, errors or discrepancies in the Contract Documents prior to the submission of its Bid. Intended Bidders shall have visited the site of the Work and familiarized themselves with the conditions there existing as well as all other conditions relating to the construction and labor under which the work will be performed and affecting cost, progress or performance of the Work. The submittal of a Bid shall be considered an acknowledgement on the part of the Bidder of its familiarity with conditions at the site of the Work.

Bids for the Work shall be made on the forms contained in the following sections and shall include the following completed documents:

<u>SECTION</u>	<u>TITLE</u>
00300	BID FORM
00410	BID GUARANTY BOND
00420	BIDDER'S EXPERIENCE AND QUALIFICATIONS
00430	DESIGNATION OF SUBCONTRACTORS
00440	SITE VISIT AFFIDAVIT
00480	NON-COLLUSION AFFIDAVIT
00490	AFFIDAVIT OF SAFETY COMPLIANCE

A complete set of Bid forms shall be placed in an envelope, sealed, and addressed to:

City of Sausalito  
Attn: Debbie Pagliaro, City Clerk  
420 Litho Street, Sausalito, CA 94965  
Priority 1 Sewer Replacement Project  
Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation

A pre-bid conference will be held at the time and place stipulated in Section 00010, **NOTICE INVITING BIDS**. The conference will be conducted by the City. Subcontractors and other interested parties are invited and encouraged to attend. A tour of the site of the Work will be conducted if so requested by any of the persons attending the conference.

The City reserves the right to postpone the date and time for receiving and/or opening of Bids at any time prior to the date and time established in the Notice Inviting Bids. Postponement notices may be faxed and will subsequently be mailed to planholders of record in the form of addenda.

Addenda may be issued to all planholders during the Bid period. Any and all addenda issued shall become a part of the Contract Documents and shall be fully considered by all Bidders during formation of Bids.

Bids shall be made on the blank bid forms prepared by the City and issued separately from these Contract Documents. Bid forms included in these Contract Documents shall be used for reference only.

Bids shall give the prices proposed in figures, shall give all other information requested herein, and shall be signed by the Bidder or an authorized representative, including address. By submission of a proposal on the separate forms provided by the City, the Bidder attests that the Bidder has purchased a complete set of these Contract Documents and is aware of its entire contents. Bidder is required to provide a complete Bid on all schedules listed in Section 00310, **BID SCHEDULE**.

Bids shall be delivered to the City at the above address before the time set for the opening of Bids as provided in Section 00010, **NOTICE INVITING BIDS**.

After the expiration of the time for submission of Bids, all Bids will be publicly opened, read, declared, and referred to the City Council for action.

## **ARTICLE 2 – BID PRICES**

Bid prices shall include everything necessary for the completion of construction and fulfillment of the Contract. Bid prices shall include all federal, state and local taxes. Costs for developing, submitting, and presenting Bids are the sole responsibility of the Bidder and claims for reimbursement will not be accepted by the City.

If the product of a unit price and an estimated quantity does not equal the extended amount quoted, the unit price shall govern, and the correct product of the unit price and the estimate quantity shall be deemed to be the amount Bid. If the sum of two or more items in a bidding schedule does not equal the total amounts quoted, the individual item amounts shall govern and the correct total shall be deemed to be the amount Bid.

### **ARTICLE 3 – BIDDER’S SIGNATURE AND AUTHORITY**

If the Bid is made by an individual, Bidder’s name, signature, and post office address must be shown; if made by a firm or partnership, a list of the partners, and the signature of at least one of the general partners must be shown; if made by a corporation, the Bid shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation, and the title of the person who signs on behalf of the corporation. If the Bid is made by a corporation, a certified copy of the bylaws or resolution of the Board of Directors of the corporation shall be furnished showing the authority of the officer signing the Bid to execute contracts on behalf of the corporation. If the Bid is made by a joint venture, the Bid shall be signed by a representative of one of the joint venture firms. Additionally, the Bid shall include a copy of the resolution or agreement empowering the representative to execute the Bid and bind the joint venture.

### **ARTICLE 4 – BID IRREGULARITIES**

Each Bid and the information requested shall be enclosed in a sealed envelope and labeled as specified herein. Bidders are warned against making erasures or alterations of any kind, and Bids which contain omissions, erasures, or irregularities of any kind may be rejected. No oral, telegraphic, electronic (including E-Mail), facsimile, or telephonic bids or modifications will be considered.

### **ARTICLE 5 – MODIFICATION OF BID**

Modification of a Bid already received will be considered only if the modification is received prior to the time established for receiving Bids. Modifications shall be made in writing, executed, and submitted in the same form and manner as the original Bid.

### **ARTICLE 6 – SUBCONTRACTORS AND MAJOR SUPPLIERS**

In accordance with California Public Contracting Code Section 4100, et. Seq., each Bid shall have listed in Section 00430, **DESIGNATION OF SUBCONTRACTORS**, the name, portion of work to be performed, and location of the place of business of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the Work or improvement, or of any subcontractor licensed by the State of California who, under subcontract to the Bidder, will specifically fabricate and install a portion of the Work or improvement according to detailed drawings contained in the Contract Documents, in an amount in excess of one-half of one percent of the Bidder’s total bid or \$10,000, whichever is greater.

If the Contractor fails to designate in its proposal a subcontractor for any portion of the Work as required above, the Bidder shall be deemed to have agreed to perform such portion of the Work itself and shall not be permitted to subcontract said portion of the Work without the written permission of the City in accordance with applicable law.

## **ARTICLE 7 – BID GUARANTY BOND AND CONTRACT AWARD**

Bids shall be accompanied by one of the following forms of Bidder's Security: Cash or; a certified or cashier's check payable to the City; or a Bidder's Bond (Bid Guaranty Bond) executed by an admitted surety made payable to the City. The Bidder's Security shall be in an amount not less than ten (10) percent of the aggregate of the Bid. Said Bidder's Security shall be a guarantee that the Bidder, if awarded the Work, will within ten (10) days after award: (1) enter into a Contract in specified form, (2) furnish a bond of faithful performance and a labor and material bond, and (3) furnish specified insurance policies. In case of refusal or failure to enter into said Contract or to provide said bonds and insurance policies, the Bidder's Security shall be forfeited to the City, the proceeds therefrom being hereby agreed upon as liquidated damages to the said City on account of the delay in the execution of the Contract and required bonds and the performance of the Work thereunder, and the necessity of accepting a higher or less desirable Bid resulting from such failure or refusal to execute the Contract and the bonds as required.

Upon the execution of the Contract and the approval on behalf of the City of the accompanying bonds and insurance policies, all certified checks that accompany Proposals and that have not heretofore been returned, will be returned, each to its maker.

Award of the Contract will be made within sixty (60) days after the opening of Bids to the lowest responsive, responsible bidder complying with these instructions, Section 00010, **NOTICE INVITING BIDS**, and such other pertinent provisions of the Contract Documents as may apply. The Award of the Contract may be made after the sixtieth (60<sup>th</sup>) day after the opening of the Bids if mutually agreed to by both the City and the successful Bidder in writing. If award is made, it will be based on the lowest responsive, responsible Bid whose base Bid and alternate(s) as listed in Section 00300, **BID FORM**, yields the lowest total Contract price. Selection of any or all alternates shall be at the sole discretion of the City. The City, however, reserves the right to reject any or all Bids, and to waive any informality in Bids received.

## **ARTICLE 8 – CONTRACTOR'S LICENSE**

Each Bidder shall be licensed in accordance with the provisions of the Contractors License Law of California as stipulated in Section 00010, **NOTICE INVITING BIDS**.

## **ARTICLE 9 – WORK PERCENTAGES**

The Contractor shall perform with its own organization no less than fifty-one (51) percent of the work.

## **ARTICLE 10 – COLLUSION**

If the City has reason to believe that collusion exists among Bidders, the City will reject the Bids of the known participants in such collusion and may, at its option, require that all Bidders certify under penalty of perjury, that no collusion has occurred or exists. The City also, at its option, may reject all Bids received. In accordance with Public Contract Code Section 7106, the Contractor shall complete and file with its proposal the Non-Collusion Affidavit in Section 00480. Public Contract Code Section 7106 requires that the affidavit must be duly sworn.



## **ARTICLE 11 – INTERPRETATIONS**

No oral representations or interpretations will be made to any Bidder as to the meaning of the Contract Documents. Requests for an interpretation shall be made in writing and delivered to the following address at least ten (10) days before the Bids are opened as provided in Section 00010, NOTICE INVITING BIDS.

Requests should be made to Todd Teachout, City Engineer, City of Sausalito, 420 Litho Street, Sausalito, CA 94965.

## **ARTICLE 12 – WITHDRAWAL OF BID**

In accordance with Public Contract Code Sections 5101 and 5103, within five (5) days after the opening of Bids, a Bidder may withdraw its Bid providing the Bidder can establish to the City's satisfaction that a mistake was made in preparing the Bid. A Bidder desiring to withdraw shall give written notice to the City, specifying, in detail, how the mistake occurred and how the mistake made the Bid materially different than it was intended to be. Withdrawal will not be permitted for mistakes resulting from errors in judgment or carelessness in inspecting the site of the Work or in reading the Contract Documents.

## **ARTICLE 13 – BID PROTEST**

Any Bid protest must be submitted in writing to the City Manager before 4:30 p.m. on the fifth (5<sup>th</sup>) working day following Bid opening.

- A. The initial protest document must contain a complete statement of the basis for the protest, and all supporting documentation.
- B. The party filing the protest must have actually submitted a Bid for the Work. A subcontractor of a party submitting a Bid for the Work may not submit a Bid protest. A party may not rely on the Bid protest submitted by another Bidder, but must timely pursue its own protest.
- C. The protest must refer to the specific portion of the Bid document which forms the basis for the protest.
- D. The protest must include the name, address and telephone number of the person representing the protesting party.
- E. 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 which 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.
- F. The City will give the protested Bidder five (5) working days after the receipt of the protest to submit a written response. The responding Bidder shall transmit the response to the protesting Bidder concurrent with delivery to the City.

- G. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder's sole and exclusive remedy in the event of Bid protest. The 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
- H. If the City determines that a protest is frivolous, the protesting Bidder may be determined to be non-responsible and that Bidder may be determined to be ineligible for future contract awards.

**ARTICLE 15 – BIDDERS CHECKLIST**

This checklist has been prepared and furnished to aid Bidders in including all necessary supporting information with their Bid. Bidder's submittals shall include, the following, in addition to any other materials which Bidder may wish to submit:

<u>Item</u>	<u>Checked</u>
Bid Form (Section 00300)	_____
Bid Guaranty Bond (Section 00410)	_____
Bidder's Experience and Qualifications (Section 00420)	_____
Designation of Subcontractors (Section 00430)	_____
Site Visit Affidavit (Section 00440)	_____
Non-Collusion Affidavit (Section 00480)	_____
Affidavit of Safety Compliance (Section 00490)	_____

**\*\*END OF SECTION\*\***

## SECTION 00200

### INFORMATION AVAILABLE TO BIDDERS

#### ARTICLE 1 – SUBSURFACE CONDITIONS

Subsurface investigation has been conducted at the site of the Work. Copies of the geotechnical report with the records of borings made at the work site are available for reference at the City offices and are included as a reference attachment to the Specifications. These records pertain to conditions at the boring locations. Upon review of the Contract Documents, the geotechnical report(s) and personal site inspection, the Bidders may develop reasonable interpretation of subsurface conditions. Contractors, as Bidders, are expected to make a personal inspection of the site and otherwise satisfy themselves as to the conditions affecting the work as detailed in these Contract Documents. The subsurface investigation and geotechnical report were developed for design purposes, and as such may not include necessary information for, any or all, construction related activities including, but not limited to, excavations, sheeting, shoring, bracing and dewatering.

The City disclaims responsibility for the Bidder's interpretation of data, such as, projecting or extrapolating from the test holes to other locations on the site of the Work, soil bearing values and profiles, and soil stability, as well as the presence, level, and extent of underground water for subsurface conditions during construction operations.

#### ARTICLE 2 – RECORD DRAWINGS AND ADDITIONAL INFORMATION

Previous construction activities have occurred at portions of the site. Section 00800-Article 5, **RECORD DRAWINGS AND ADDITIONAL INFORMATION**, lists known available information for review by Bidders.

#### ARTICLE 3 – ACCESS FOR CONTRACTOR'S PRE-BID SITE INVESTIGATION

Additional access to the sewer easement will be allowed without special permission. The Anchor Pump Station internals will not be made available for viewing outside of the pre-bid conference site visit. The site may be viewed from the public parking lot.

**\*\*END OF SECTION\*\***

*(THIS PAGE LEFT BLANK INTENTIONALLY)*

**SECTION 00300**

**BID FORM**

**PROJECT IDENTIFICATION:** Priority 1 Sewer Replacement Project, Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation

**THIS BID IS SUBMITTED TO:**

City of Sausalito, herein after referred to as OWNER.

**1. Enter Into Agreement**

The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

**2. BIDDER Acknowledgements**

BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within 10 days after the date of OWNER's Notice of Award.

**3. BIDDER's Representations**

In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

- a. BIDDER has examined and carefully studied the Bidding Documents and the following Addenda receipt of all which is hereby acknowledged: (List Addenda by Number)

ADDENDA NO.
-------------

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- b. BIDDER has visited the Site and become familiar with and is satisfied as to the general and local site conditions that may affect cost, progress, performance and furnishing of the Work.
- c. BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

- d. BIDDER has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions, and (2) reports and drawings of Hazardous Environmental Conditions that have been identified in the Supplementary Conditions.
- e. BIDDER accepts the determination set forth in Paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in Paragraph 4.02 of the General Conditions.
- f. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER's purposes.
- g. BIDDER acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site.
- h. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto.

BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

- i. BIDDER is aware of the general nature of Work to be performed by OWNER and others at the Site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- j. BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- k. BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.

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

- l. Where conflicts, errors, ambiguities or discrepancies have been discovered in or between Contract Documents and/or other related documents, and where said conflicts, etc., have not been resolved through the interpretations or clarifications by ENGINEER as described in the Instructions to Bidders, because of insufficient time or otherwise, BIDDER has included in the Bid the greater quantity or better quality of Work, or compliance with the more stringent requirement resulting in a greater cost.
  
- m. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.

**4. Bid Prices**

BID SCHEDULE

BID ITEM NO.	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	BID PRICE
1	Mobilization and Demobilization	1	LS		
2	Bypass Pumping and Control of Sewage Floor	1	LS		
3	Dewatering	1	LS		
4	Shoring	1	LS		
5	4-inch Force Main	593	LF		
6	6-inch Sanitary Sewer	96	LF		
7	8-inch Sanitary Sewer	476	LF		
8	Lateral Replacement and Connection to MH or Sewer	4	EA		
9	Grease Interceptor	1	LS		
10	Manholes	1	EA		
11	Existing Manholes	4	EA		
12	Package Lift Station	1	LS		
13	Restaurant Plumbing Changes	1	LS		
14	Anchor Pump Station Rehabilitation	1	LS		
Alternate Item	Demolition of Existing Parking Attendant Kiosk	1	LS		

TOTAL BID FOR ALL BID ITEMS (use figures) \$ \_\_\_\_\_

TOTAL BID FOR ALL BID ITEMS (use words)

\_\_\_\_\_ dollars and \_\_\_\_\_ cents

**5. Completion**

BIDDER agrees that the Work will be substantially completed and ready for final payment in accordance with Section 00700-6.02 of the General Conditions on or before the dates or within the number of calendar days indicated in Section 00800.

BIDDER accepts the provisions of Section 00700 as to liquidated damages in the event of failure to complete the Work within the times specified.

**6. Attached Documents**

The following documents are attached to and made a condition of this Bid:

- a. Bid Guaranty Bond (Section 00410)
- b. Bidder's Experience and Qualifications (Section 00420)
- c. Designation of Subcontractors (Section 00430)
- d. Site Visit Affidavit (Section 00440)
- e. Non-Collusion Affidavit (Section 00480)
- f. Affidavit of Safety Compliance (Section 00490)
- g. Copy of BIDDER'S California State Contractor's License.

**7. Major Equipment Items – Not Used**

**8. Documents to be submitted prior to Notice to Proceed:**

- a. Agreement (Section 00500)
- b. Bond of Faithful Performance (Section 00610)
- c. Payment Bond (Section 00620)
- d. Escrow Agreement (Section 00630)
- e. General Liability Endorsement (Section 00650)
- f. Auto Liability Endorsement (Section 00651)

**9. Address for Communications**

Communications concerning this Bid shall be addressed to the address of BIDDER indicated below:

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

**10. Defined Terms**

Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.

SUBMITTED on \_\_\_\_\_, 20\_\_.



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

If BIDDER is:

An Individual

By \_\_\_\_\_ (SEAL)

(Individual's name)

doing business as

\_\_\_\_\_

Business address:

\_\_\_\_\_

A Partnership

By \_\_\_\_\_ (SEAL)

(Firm name)

\_\_\_\_\_

(General partner)

Business address:

\_\_\_\_\_

A Corporation

By \_\_\_\_\_ (SEAL)

(Corporation name)

\_\_\_\_\_

(State of incorporation)

By \_\_\_\_\_ (SEAL)

(Name of person authorized to sign)

\_\_\_\_\_

(Title)

(Corporate Seal)

Attest

\_\_\_\_\_

(Secretary)

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

Business address:

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

A Joint Venture

By \_\_\_\_\_ (SEAL)  
(Name)

\_\_\_\_\_  
(Address)

By \_\_\_\_\_ (SEAL)  
(Name)

\_\_\_\_\_  
(Address)

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

NOTE: Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.

**\*\*END OF SECTION\*\***

SECTION 00410

BID GUARANTY BOND  
(To Accompany Bid)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT \_\_\_\_\_, hereinafter called the principal, and \_\_\_\_\_, hereinafter called the Surety, are jointly and severally held and firmly bound unto the City of Sausalito, Sausalito, California, a public entity, hereinafter called the Obligee, each in the penal sum of ten percent of the total amount of the Base Bid Proposal of the Principal for the Work, this sum not to exceed \_\_\_\_\_ dollars of lawful money of the United States for the payment whereof unto the Obligee, the Principal and Surety jointly and severally bind themselves forever.

WHEREAS, the Principal is herewith submitting its offer for the fulfillment of Obligee's Contract for:

Priority 1 Sewer Replacement Project

Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation

NOW, THEREFORE, the condition of this obligation is such that if the Principal is awarded the Contract, and if the Principal within the time specified in the proposal for such Contract enters into, executes and delivers to the Obligee an agreement in the form specified in the Contract Documents complete with evidences of insurance specified in the Contract Documents, and if the Principal within the time specified in the proposal gives to the Obligee the payment and performance bonds specified in the Contract Documents, then this obligation shall be void; otherwise, the Principal and Surety will pay unto the Obligee the difference in money between the total amount of the proposal of the Principal and the amount for which the Obligee legally contracts with another party to fulfill the Contract if the latter amount be excess of the former, but in no event shall the Surety's liability exceed the penal sum hereof.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable under this obligation as Principal, and that nothing of any kind or nature whatsoever that will not discharge the Principal shall operate as a discharge or a release of liability of the Surety.

IT IS HEREBY FURTHER DECLARED AND AGREED that this obligation shall be binding upon and inure to the benefit of the Principal, the Surety and the Obligee and their respective heirs, executors, administrators, successors and assigns.

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\*\*END OF SECTION\*\*

*(THIS PAGE LEFT BLANK INTENTIONALLY)*

**SECTION 00420**

**CERTIFICATION OF BIDDER'S  
EXPERIENCE AND QUALIFICATIONS  
(To Accompany Bid)**

The undersigned Bidder certifies that it is, at the time of bidding, and shall be, throughout the period of the Contract, licensed under the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California, to do the type of work contemplated in the Contract Documents. Bidder shall further certify that it is skilled and regularly engaged in the general class and type of work called for in the Contract Documents.

The Bidder represents that it is competent, knowledgeable, and has special skills on the nature, extent, and inherent conditions of the work to be performed. Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the particular facilities which may create, during the construction program, unusual or peculiar unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the construction work with respect to such hazards.

**ARTICLE 1 – ESSENTIAL REQUIREMENTS FOR QUALIFICATION**

If the answer to any of questions 1 through 3 is “no”, or if the answer to any of questions 4 through 7 is “yes”, the Bidder will be disqualified from being awarded the Contract.

1. Bidder possesses a valid and current California Contractor’s license for the project for which it intends to submit a Bid.  
 Yes       No
  
2. Bidder will comply with and provide all insurance as defined in Section 00800-Article 2, **INDEMNITY AND INSURANCE**.  
 Yes       No
  
3. Bidder has current Workers’ Compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.  
 Yes       No
  
4. Has your contractor’s license been revoked at any time in the last five (5) years?  
 Yes       No
  
5. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?  
 Yes       No

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

6. At the time of submitting this qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?  
 Yes       No
7. At any time during the last five (5) years, has your firm, or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?  
 Yes       No

**ARTICLE 2 – PROJECT EXPERIENCE**

The Bidder shall list below at least five (5) projects completed in the last five (5) years of at least \$1,000,000 in Contract Amount involving construction of sewer pipeline rehabilitation that indicate the Bidder's experience as a Contractor. If the Bid is submitted by a Joint Venture, list at least four (4) completed projects. It is acceptable to submit this information on other forms as long as the information required below is included. Failure to provide this information with the Bid may render the Bid non-responsive and may be the basis for rejection of the Bid.

1. Project Name: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Construction Cost: \$ \_\_\_\_\_  
Construction Time: \_\_\_\_\_ Calendar Days  
Owner's Representative: \_\_\_\_\_  
Owner's Telephone No: (\_\_\_\_) \_\_\_\_\_  
Date of Substantial Completion: \_\_\_\_\_
2. Project Name: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Construction Cost: \$ \_\_\_\_\_  
Construction Time: \_\_\_\_\_ Calendar Days  
Owner's Representative: \_\_\_\_\_  
Owner's Telephone No: (\_\_\_\_) \_\_\_\_\_  
Date of Substantial Completion: \_\_\_\_\_

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

3. Project Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Construction Cost: \$ \_\_\_\_\_

Construction Time: \_\_\_\_\_ Calendar Days

Owner's Representative: \_\_\_\_\_

Owner's Telephone No: (\_\_\_\_\_) \_\_\_\_\_

Date of Substantial Completion: \_\_\_\_\_

4. Project Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Construction Cost: \$ \_\_\_\_\_

Construction Time: \_\_\_\_\_ Calendar Days

Owner's Representative: \_\_\_\_\_

Owner's Telephone No: (\_\_\_\_\_) \_\_\_\_\_

Date of Substantial Completion: \_\_\_\_\_

5. Project Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Construction Cost: \$ \_\_\_\_\_

Construction Time: \_\_\_\_\_ Calendar Days

Owner's Representative: \_\_\_\_\_

Owner's Telephone No: (\_\_\_\_\_) \_\_\_\_\_

Date of Substantial Completion: \_\_\_\_\_

### ARTICLE 3 – SAFETY QUALIFICATION CRITERIA

The following information will be used to determine if you meet 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: \_\_\_\_\_

<u>Year</u>	<u>EMR</u>
_____	_____
_____	_____
_____	_____

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: (\_\_\_\_\_) \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
Contractor's License No.

\_\_\_\_\_  
Expiration Date

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

\_\_\_\_\_  
Title of Signatory

**\*\*END OF SECTION\*\***





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

*(THIS PAGE LEFT BLANK INTENTIONALLY)*

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

**SECTION 00440**

**SITE VISIT AFFIDAVIT TO BE EXECUTED  
BY BIDDER, NOTARIZED AND SUBMITTED WITH BID  
(To Accompany Bid)**

State of California )  
 ) ss.  
County of \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that he or she  
(Contractor's Authorized Representative)

is \_\_\_\_\_ of \_\_\_\_\_  
(Title of Representative) (Contractor's Legal Name)

the party making the foregoing Bid, has visited the Project site as described in the Contract Documents and has examined and familiarized themselves with the existing conditions, as well as all other conditions relating to the construction which will be performed. The submittal of a Bid shall be considered an acknowledgment on the part of the Bidder of familiarity with conditions at the site of the Work and that the site examination has provided adequate and sufficient information related to existing conditions which may affect cost, progress or performance of the Work.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Type/Print Name of Bidder

\_\_\_\_\_  
Type/Print Representative's Name

\_\_\_\_\_  
Type/Print Title

\_\_\_\_\_  
Date

(Certificate of Acknowledgment to be executed by Notary on following page)

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

State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ the  
(Date) (Name and Title of Officer)

undersigned, a notary public in and for said state, personally appeared

\_\_\_\_\_  
(Name(s) of person(s) signing above document)

personally known to me       proved to me on the basis of satisfactory evidence  
(check appropriate box)

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

WITNESS my hand and official seal.

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

**\*\*END OF SECTION\*\***

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

**SECTION 00480**

**NON-COLLUSION AFFIDAVIT TO BE EXECUTED  
BY BIDDER, NOTARIZED AND SUBMITTED WITH BID  
(To Accompany Bid)**

\_\_\_\_\_, being first duly sworn, deposes and says that he or she  
(Contractor's Authorized Representative)

is \_\_\_\_\_ of \_\_\_\_\_ the party making the foregoing Bid;  
(Title of Representative) (Contractor's Name)

that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the Bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public in and for the State of California

Public Contract Code Section 7106  
Code of Civil Procedure Section 2015.5

**\*\*END OF SECTION\*\***

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

*(THIS PAGE LEFT BLANK INTENTIONALLY)*

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

**SECTION 00490**

**AFFIDAVIT OF SAFETY COMPLIANCE TO BE EXECUTED  
BY BIDDER, NOTARIZED AND SUBMITTED WITH BID  
(To Accompany Bid)**

**Priority 1 Sewer Replacement Project, Project 1B: Spinnaker/Humboldt Street Sewer and  
Anchor Pump Station Rehabilitation**

The Contractor agrees in accordance with the requirements of Section 00700-4.07, **SAFETY**, that for purposes of California Labor Code Section 6400 and related provisions of law, the Contractor, the Contractor's privities and any other entities acting pursuant to this Contract will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities acting pursuant to this Contract and that the City will not be responsible for having hazards corrected and/or removed at the location where the Work under the Contract is to be performed.

The Contractor hereby acknowledges City concerns regarding safety at its facility and at the Project worksite. The Contractor shall conduct its operations to eliminate or reduce hazards and risks associated with Contractor's activities, to prevent accidents and injuries, and to prevent property damage. Therefore, the Contractor is fully responsible for and shall be in compliance with all of the most current safety, health and environmental regulations (federal, state and local). Non-compliance with these regulations may result in suspension or termination of work in progress. The Contractor's Safety Programs must accomplish the foregoing objectives. The Contractor certifies that its Safety Programs comply and will satisfy these requirements. The Contractor also certifies that each Subcontractor and Sub-subcontractors and other parties with which it has agreements to perform work on the Project worksite will also comply and will satisfy these requirements.

Parts A, B, C and D of the attached Contractor Safety Operations Requirements are not required to be completed and submitted with the Bid. The completed forms shall be submitted for the City's review with the Contractor's Safety Program prior to commencement of work on the Project as required in Section 00700-4.07B, **Safety Program**. The Contractor certifies that it can furnish satisfactory evidence of compliance with the elements identified in the attached Contractor Safety Operations Requirements and the Contractor's Safety Program. The Contractor further acknowledges that it's Subcontractors and Sub-subcontractors will provide all Safety Compliance documents to Contractor in accordance with this Section 00490, **AFFIDAVIT OF SAFETY COMPLIANCE** and Section 00700-4.07, **SAFETY**.

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

The Contractor acknowledges it has read the City's Confined Space Entry Program included in Appendix B, understands the existing facilities identified as confined spaces therein and will comply with the safety considerations applicable to this Project.

Executed On: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

*(Attach a Certificate of Acknowledgement for the Notary to the Affidavit)*



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

**CERTIFICATE OF ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
*Date Name, Notary Public*

personally appeared \_\_\_\_\_,  
*Name, Title of Officer*

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

Witness my hand and official seal.

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

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

**CONTRACTOR SAFETY OPERATIONS REQUIREMENTS**  
**(To be submitted with Contractor's Safety Program prior to commencing work)**

**PART A - SAFETY PROGRAMS**

Please indicate below whether your firm has the following written safety programs. If any of the programs listed do not apply to your operations or this project, please make note of this in the "Comments" column. Include any information that you think would be helpful to us in making this assessment. Those programs that are indicated as mandatory must be available for review before commencing work on this Project. Other safety programs may be requested if it is later determined that they are applicable to the Project, and as such, must be made available for review upon request, at no additional charge to the City.

Mandatory	Program Name	Written Program		Program meets Cal/OSHA Criteria		Sub will Provide	Project Employees Trained		Training Documented		Comments
		Yes	No	Yes	No		Yes	No	Yes	No	
YES	Injury and Illness Prevention										
YES	Hazard Communication										
YES	Confined Space Operations										
YES	Respiratory Protection										
YES	Emergency Response										
YES	Hearing Conservation										
YES	Lockout/Tagout										
YES	New Employee Orientation										
YES	Excavation Safety										
YES	Code of Safe Practices										
YES	Personal Protective Equipment (PPE)										
YES	Drugs/Alcohol										
YES	Traffic Control Safety										
YES	Fall Prevention Plan <sup>1</sup>										

<sup>1</sup> If conventional fall protection measures cannot be used.

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

**PART B - SAFETY EQUIPMENT**

Identify what safety equipment will be available and used for this Project.

Type	Description / Comments
<input type="checkbox"/> Gas Detectors	
<input type="checkbox"/> Ventilation Equipment	
<input type="checkbox"/> Approved Harnesses and Lanyards	
<input type="checkbox"/> Mechanical Hoists	
<input type="checkbox"/> Fire Extinguishers	
<input type="checkbox"/> First Aid Kits	
<input type="checkbox"/> Respirators	
<input type="checkbox"/> Hard Hats	
<input type="checkbox"/> Hearing Protection	
<input type="checkbox"/> Safety Goggles	
<input type="checkbox"/> Steel Toed Footwear	
<input type="checkbox"/> Hand Protection	
<input type="checkbox"/> Fall Protection	
<input type="checkbox"/> Confined Space Rescue Equipment	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

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

**PART C - SPECIALIZED TRAINING AND CERTIFICATION**

Identify the areas of specialized training or certification that will have been completed by employees who will be assigned to this Project. Be prepared to provide documentation as requested.

<input type="checkbox"/>	CPR / First Aid	<input type="checkbox"/>	Fork Lift Operation
<input type="checkbox"/>	Cranes / Hoists Operation	<input type="checkbox"/>	Heavy Equipment Operation
<input type="checkbox"/>	Powder-Actuated Tools Use	<input type="checkbox"/>	Confined Space Operations and Rescue
<input type="checkbox"/>	Respirators	<input type="checkbox"/>	Trenching and Shoring Competent Person
	<input type="checkbox"/> Air-Supplying	<input type="checkbox"/>	Welding
	<input type="checkbox"/> Air-Purifying	<input type="checkbox"/>	Asbestos Abatement
<input type="checkbox"/>	Scaffolding	<input type="checkbox"/>	Flagging
<input type="checkbox"/>	Traffic Control		

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

**PART D – JOB SITE SAFETY PRACTICES**

1. Name of person who will have responsibility for job site safety?  
\_\_\_\_\_
2. Who will be responsible for conducting and documenting accident investigations?  
\_\_\_\_\_  
  
Does your company perform near-miss investigations? \_\_\_\_\_  
Please provide sample copy of investigation forms.
3. How often are job site safety audits or inspections performed, \_\_\_\_\_  
and by whom? \_\_\_\_\_
4. Does the person who is responsible for job site safety have authority to take immediate action to correct unsafe conditions of work practices? \_\_\_\_\_
5. Who will be designated the competent person for excavation safety on the project?  
\_\_\_\_\_  
  
Provide substantiation of training for the competent person.
6. How often are job site tailgate or toolbox safety meetings held? \_\_\_\_\_
7. Briefly describe how you will ensure that workers comply with safety programs and Cal/OSHA requirements? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Please list any Cal/OSHA citations and penalties you have received in the last three years.  
\_\_\_\_\_  
\_\_\_\_\_
9. Have there been any on-the-job fatalities at any job site managed by the Contractor in the last five years? \_\_\_\_\_ If yes, please explain.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. Does your company have a safety incentive program? \_\_\_\_\_  
  
If yes, please explain. \_\_\_\_\_  
\_\_\_\_\_



SECTION 00500

AGREEMENT FOR THE CONSTRUCTION OF  
Priority 1 Sewer Replacement Project

**Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation**

THIS AGREEMENT, made and concluded, in triplicate, this \_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, between the CITY OF SAUSALITO ("City"), party of the first part, and \_\_\_\_\_  
\_\_\_\_\_ ("Contractor"), party of the second part.

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

WITNESSETH:

1. That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said party of the first part, and under the conditions expressed in the two bonds, bearing even date with these presents, and hereunto annexed, the said party of the second part agrees with the said party of the first part, at his/her own proper cost and expense, to do all the Work and furnish all the materials necessary to construct and complete in good workmanlike and substantial manner the project entitled: Priority 1 Sewer Replacement Project in strict conformity with the Contract Documents prepared therefore, which said Contract Documents are hereby specially referred to and by said reference made a part hereof.
2. Now, therefore, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to complete the Work in accordance with the terms and conditions stipulated in the Contract Documents for the sum of \_\_\_\_\_  
\_\_\_\_\_(\$\_\_\_\_\_) computed in accordance with Contractor's accepted proposal dated \_\_\_\_\_, 20\_\_\_\_, which accepted proposal is incorporated herein by reference thereto as if herein fully set forth. Compensation shall be based upon any lump sum bid items plus the unit prices stated in the Bid Schedule times the actual quantities or units of work and materials performed or furnished. The further terms, conditions, and covenants of this Agreement are set forth in the Contract Documents, each of which is by this reference made a part hereof. Payments are to be made to the Contractor in accordance with the provisions of the Contract Documents and the Technical Specifications in legally executed and regularly issued warrants of the City, drawn on the appropriate fund or funds as required by law and order of the City thereof.

3. The party of the first part hereby promises and agrees with the said Contractor to employ, and does hereby employ, the said Contractor to provide the materials and to do the Work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.
4. The Contractor and any subcontractor performing or contracting any work shall comply with all applicable provisions of the California Labor Code for all workers, laborers and mechanics of all crafts, classifications or types, including, but necessarily limited to the following:
  - (a) The Contractor shall comply with all applicable provisions of Sections 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The Contractor shall, as a penalty to the City, forfeit the sum of twenty-five dollars (\$25) for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of eight (8) hours at not less than 1-1/2 times the basic rate of pay.
  - (b) Pursuant to the provision of California Labor Code, Section 1770 et. seq., the Contractor and any subcontractor under him shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Pursuant to the provisions of California Labor Code Section 1773.2, the Contractor is hereby advised that copies of the prevailing rate of per diem wages and a general prevailing rate for holidays, Saturdays and Sundays and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker required to execute the Contract, are on file in the office of the City, which copies shall be made available to any interested party on request. The Contractor shall post a copy of said prevailing rate of per diem wages at each job site.
  - (c) As required by Section 1773.1 of the California Labor Code, the Contractor shall pay travel and subsistence payments to each worker needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.
  - (d) To establish such travel and subsistence payments, the representative of any craft, classification, or type of workman needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within ten (10) days after their execution and thereafter shall establish such travel and subsistence payments whenever filed thirty (30) days prior to the call for bids.



- (e) The Contractor shall comply with the provisions of Section 1775 of the California Labor Code and shall, as a penalty to the City, forfeit up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the Contract. The Contractor shall pay each worker an amount equal to the difference between the prevailing wage rates and the amount paid worker for each calendar day or portion thereof for which a worker was paid less than the prevailing wage rate. 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.
- (f) As required under the provisions of Section 1776 of the California Labor Code, Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Said payroll shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
  - (2) A certified copy of all payroll records enumerated in Paragraph 4(f), herein, shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  - (3) A certified copy of all payroll records enumerated in Paragraph 4(f), herein, shall be made available upon request by the public for inspection or for copies thereof; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph 4(e) herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal offices of the Contractor.

The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

Each Contractor shall file a certified copy of the records, enumerated in Paragraph 4(f) with the entity that requested the records within ten (10) days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated. The Contractor shall inform the City of the location of the records enumerated under Paragraph 4(f) including the street address, city and county, and shall, within five (5) working days, provide a notice of change of location and address. The Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Paragraph 4(f). In the event that the Contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or the City, forfeit \$25.00 dollars for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Responsibility for compliance with Paragraph 4(f) lies with the Contractor.

- (g) The Contractor and any subcontractors shall, when they employ any person in any apprenticeable craft or trade, apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the construction site for a certificate approving the Contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; and shall comply with all other requirements of Section 1777.5 of the California Labor Code. The responsibility of compliance with California Labor Code Section 1777.5 during the performance of this Contract rests with the Contractor. Pursuant to California Labor Code Section 1777.7, in the event the Contractor willfully fails to comply with the provisions of California Labor Code Section 1777.5, the Contractor shall be denied the right to bid on any public works contract for up to three (3) years from the date noncompliance is determined and be assessed civil penalties.
- (h) In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860), and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the California Labor Code, the Contractor is required to secure the payment of compensation to its employees and for that purpose obtain and keep in effect adequate Workers' Compensation Insurance. If the Contractor, in the sole discretion of the City satisfies the City of the responsibility and capacity under the applicable Workers' Compensation Laws, if any, to act as self-insurer, the Contractor may so act, and in such case, the insurance required by this paragraph need not be provided.

The Contractor is advised of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and shall comply with such provisions and have Employer's Liability limits of \$1,000,000 per accident before commencing the performance of the Work of this Contract.

The Notice to Proceed with the Work under this Contract will not be issued, and the Contractor shall not commence work, until the Contractor submits written evidence that it has obtained full Workers' Compensation Insurance coverage for all persons whom it employs or may employ in carrying out the Work under this Contract. This insurance shall be in accordance with the requirements of the most current and applicable state Workers' Compensation Insurance Laws. In accordance with the provisions of Section 1861 of the California Labor Code, the Contractor in signing this agreement certifies to the City as true the following statement: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract."

A subcontractor is not allowed to commence work on the project until verification of Workers' Compensation Insurance coverage has been obtained and verified by the Contractor and submitted to the Construction Manager for the City's review and records.

- (i) In accordance with the provisions of Section 1727 of the California Labor Code, the City, before making payment to the Contractor of money due under a contract for public works, shall withhold and retain therefrom all wages and penalties which have been forfeited pursuant to any stipulation in the Contract, and the terms of Chapter 1, Part 7, Division 2 of the California Labor Code (commencing with Section 1720). But no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by either the Division of Labor Standards Enforcement or by the City.
5. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of the instrument and the bid proposal of said Contractor, then this instrument shall control, and nothing herein contained shall be considered as an acceptance of the said terms of said proposal conflicting herewith.
6. The Contractor agrees to provide and maintain insurance coverage, and to indemnify and save harmless the parties named and in the manner set forth in Section 00800-Article 2, **INDEMNITY AND INSURANCE**, of the Supplementary General Conditions of the Specifications.

The duty of Contractor to indemnify and save harmless, as set forth herein, shall include a duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein shall be construed to require Contractor to indemnify against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

7. The Contractor shall diligently prosecute the Work so that it shall be substantially completed within the time specified in Section 00800-1.01, **TIME ALLOWED FOR COMPLETION**.
8. Except as otherwise may be provided herein, Contractor hereby expressly guarantees for one (1) full year from the date of the Substantial Completion of the Work under this Agreement and acceptance thereof by the City, to repair or replace any part of the Work performed hereunder which constitutes a defect resulting from the use of inferior or defective materials, equipment or workmanship. If, within said period, any repairs or replacements in connection with the Work are, in the opinion of the City, rendered necessary as the result of the use of inferior or defective materials, equipment or workmanship, Contractor agrees, upon receipt of notice from the City, and without expense to the City, to promptly repair or replace such material or workmanship and/or correct any and all defects therein. If Contractor, after such notice, fails to proceed promptly to comply with the terms of this guarantee, the City may perform the work necessary to effectuate such correction and recover the cost thereof from the Contractor or its sureties.

In special circumstances where a particular item of work or equipment is placed in continuous service before substantial completion of the Work, the correction period for that item may start to run from an earlier date. This date shall be agreed upon by the Contractor and the City on or before the item is placed in continuous service.

Any and all other special guarantees which may be applicable to definite parts of the Work under this Agreement shall be considered as an additional guarantee and shall not reduce or limit the guarantee as provided by Contractor pursuant to this paragraph during the first year of the life of such guarantee.

9. The Contractor shall provide, on the execution of this Agreement, a good and sufficient corporate surety bond in the penal sum of one hundred percent (100%) of amount bid, which bond shall be on the form provided by the City in Section 00610, **BOND OF FAITHFUL PERFORMANCE**, and be conditioned upon the faithful performance of all Work required to be performed by the Contractor under this Agreement. Said bond shall be liable for any and all penalties and obligations which may be incurred by Contractor under this Agreement. The corporate surety bond shall be issued by a corporate surety approved by the City's counsel. The corporate surety shall be authorized to conduct business in California. At its discretion, the City may request that a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California be submitted by the surety to the City. At its discretion, the City may also require the insurer to provide copies of its most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

10. In addition to the bond required under Paragraph 9, hereof, Contractor shall furnish a good and sufficient corporate surety bond in the penal sum of one hundred percent (100%) of amount of bid, which bond shall be on the form provided by the City in Section 00620, **PAYMENT BOND**, and conform strictly with the provisions of Chapter 7, Title 15, Part 4, Division 3, of the Civil Code of the State of California, and all amendments thereto. The corporate surety bond shall be issued by a corporate surety approved by the City's counsel. The corporate surety shall be authorized to conduct business in California. At its discretion, the City may request that a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California be submitted by the surety to the City. At its discretion, the City may also require the insurer to provide copies of its most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.
11. The Contractor may substitute securities for the amounts retained by the City to ensure performance of the Work in accordance with the provisions of Section 22300 of the Public Contract Code.
12. The Contractor shall be provided the time period specified in Section 01300-1.03, **MATERIAL AND EQUIPMENT SUBSTITUTIONS**, for submission of data substantiating a request for a substitution of an "or equal" item.
13. As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall submit in advance of excavations, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety in Title 8, Subchapter 4, Article 6, California Code of Regulations, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Contract for completion of the Work as set forth in the Contract Documents. Nothing in this Section shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose tort liability on the City, the Design Consultant, Construction Manager nor any of their agents, consultants, or employees. The City's review of the Contractor's excavation plan is only for general conformance to the California Construction Safety Orders.  
  
Prior to commencing any excavation, the Contractor shall designate in writing to the Construction Manager the competent person(s) with the authority and responsibilities designated in the Construction Safety Orders.
14. In accordance with Section 7104 of the Public Contract Code, whenever any work involves digging trenches or other excavations that extend deeper than four feet below the surface, the provisions of Section 00700-7.02, **DIFFERING SITE CONDITIONS**, shall apply.

15. In accordance with Section 7103.5 of the Public Contract Code, the Contractor and subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the City 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. Section 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, materials or services pursuant to this Contract or the subcontract. Such assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties.
16. In accordance with Section 4552 of the Government Code, the Contractor shall conform to the following requirements. In submitting a Bid to the City, the Contractor offers and agrees that if the Bid is accepted, it will assign to the City 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. Section 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 purchase of goods, materials, or services by the Contractor for sale to the City pursuant to the Bid. Such assignment shall be made and become effective at the time the City tenders final payment to the Contractor.
17. Pursuant to Public Contract Code Section 7100, the acceptance by the Contractor of an undisputed payment made under the terms of the Contract shall operate as, and shall be, a release to the City, and their duly authorized agents, from all claim of and/or liability to the Contractor arising by virtue of the Contract related to those amounts. Disputed contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release.
18. In accordance with California Business and Professions Code Section 7030, the Contractor is required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning the Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.
19. The acceptance of each payment made to Contractor under this Agreement shall constitute a warranty that all subcontractors, laborers and material suppliers on the Project have been paid for all work, material, labor provisions, provender, equipment, or other supplies and efforts made toward the construction of improvements.
20. **INDEMNIFICATION.** Contractor shall indemnify, defend with counsel acceptable to Owner, and hold harmless to the full extent permitted by law, the City and its officers, officials, employees, agents and volunteers, Design Consultant and its consultants for the Work and their respective agents and employees; and if one is designated by the City for the Work, the Construction Manager and its consultants for the Work and their respective

agents and employees (collectively "the Indemnified Parties") in accordance with the requirements of Section 00800-2.01E, **Indemnification**.

21. **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.

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

CONTRACTOR

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

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

THE CITY OF SAUSALITO

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

Debbie Pagliaro, City Clerk  
City of Sausalito, California

ATTEST:

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

City Counsel

**\*\*END OF SECTION\*\***

*(THIS PAGE LEFT BLANK INTENTIONALLY)*



SECTION 00610

BOND OF FAITHFUL PERFORMANCE

KNOW ALL PERSONS BY THESE PRESENTS: that, WHEREAS, the City Council of the City of Sausalito, has awarded to:

hereinafter designated as the "Principal", a Contract for constructing the

**Priority 1 Sewer Replacement Project, Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation**

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract:

NOW, THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the City of Sausalito, California, in the penal sum of (\$ \_\_\_\_\_), lawful money of the United States, being not less than one hundred (100) percent of the Contract amount, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounded Principal, it or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements said Contract and any alterations made as therein provided, on it or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Sausalito, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the said Contract, the above obligation in the amount of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), being not less than one hundred (100) percent of the Contract amount, shall hold good for a period of one (1) year after the Substantial Completion and acceptance of the said Work; and through the expiration of Warranty Period; and such additional time thereafter as may be specified in the Contract Documents. If the above bounded Principal, it or its heirs, executors, administrators, successors or assigns shall fail to make full, complete and satisfactory repair and replacements or totally protect the said City of Sausalito from loss or damage made evident during said Warranty Period, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in said sum of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), shall remain in full force and virtue otherwise the above obligation shall be void.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Contract Documents accompanying the same shall any wise affect its obligations on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the Contract Documents.

In the event the City of Sausalito, or its successors or assigns, shall be the prevailing party in an action brought upon this bond, then in addition to the penal sum hereinabove specified, we agree to pay to said City of Sausalito or its successors or assigns, a reasonable sum on account of attorney's fees in such action, which sum shall be fixed by the court.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

\_\_\_\_\_  
Principal Secretary

\_\_\_\_\_  
Principal

(SEAL) By \_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness to Surety

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

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

\_\_\_\_\_  
Address

If CONTRACTOR is partnership, all partners must execute BOND.

**\*\*END OF SECTION\*\***

SECTION 00620

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: that, WHEREAS, the City Council of the City of Sausalito has awarded to:

---

hereinafter designated as "Principal", a Contract for construction of:

**Priority 1 Sewer Replacement Project, Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation**

WHEREAS, said Principal is required to furnish a bond in connection with said Contract, providing that if said Principal, or any of it or its subcontractors, shall fail to pay for any materials, provisions, or other supplies or teams used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth:

NOW, THEREFORE, we, the Principal and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Sausalito, California, in the penal sum of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), lawful money of the United States, being not less than one hundred percent of the Contract amount, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, it or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or teams used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, as required by the provisions of Act of the Legislature of the State of California entitled "An Act to secure the payment of persons who furnished materials, contractors in the performance of such work and prescribing the duties of certain public officers with respect thereto", approved May 10, 1919, as amended, (California Civil Code Section 3247, et. seq.), and provided that the persons, companies, or corporations so furnishing said materials, provisions, or other supplies, teams, appliances, or power to be used in, upon for, or about the performance of the Work contracted to be executed or performed, or any person, power for or contributing to said Work to be done, or any person who performs work or labor upon same, or any person who supplies both work and materials therefore, shall have complied with the provisions of said Act, then said Surety will pay the same in or to any amount not exceeding the amount herein above set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney's fee as shall be fixed by the court, awarded and taxed as in the above-mentioned statute provided.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under said Act, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

\_\_\_\_\_  
Principal Secretary

\_\_\_\_\_  
Principal

(SEAL) By \_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness to Surety

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

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

\_\_\_\_\_  
Address

If CONTRACTOR is partnership, all partners must execute BOND.

**\*\*END OF SECTION\*\***

SECTION 00630

**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION  
Priority 1 Sewer Replacement Project, Project 1B: Spinnaker/Humboldt Street Sewer and  
Anchor Pump Station Rehabilitation**

This Escrow Agreement is made and entered into by and between; the City of Sausalito, whose address is 420 Litho Street, Sausalito, CA 94965; hereinafter called "City", and \_\_\_\_\_  
(Contractor)

whose address is \_\_\_\_\_

hereinafter called "Contractor", and \_\_\_\_\_  
(Escrow Agent)

whose address is \_\_\_\_\_

hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the City, Contractor, and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities which meet the requirements set forth in said Section 22300, with Escrow Agent, as a substitute for retention earnings required to be withheld by the City pursuant to the Construction Contract entered into between the City and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the City shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the City within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the City and Contractor. Securities shall be held in the name of the City, and shall designate the Contractor as the beneficial Owner.
2. The City shall make progress payments to Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the City makes payment of retentions earned directly to the Escrow Agent the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the City pays the Escrow Agent directly.

4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of the City. These expenses and payment terms shall be determined by the City, Contractor, and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the City.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the City to the Escrow Agent that the City consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The City shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven (7) days' written notice to the Escrow Agent from the City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.
8. Upon receipt of written notification from the City certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on the written notifications from the City and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement, and the City and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the City and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On Behalf of the City:

On Behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

On Behalf of Escrow Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

At the time the Escrow Account is opened, the City and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

City:

Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**\*\*END OF SECTION\*\***



SECTION 00650

GENERAL LIABILITY ENDORSEMENT (FORM A-1)

THE CITY OF SAUSALITO (City)  
420 Litho Street  
Sausalito, CA 94965

Priority 1 Sewer Replacement Project, Project 1B: Spinnaker/Humboldt Street Sewer and  
Anchor Pump Station Rehabilitation

ARTICLE 1 – POLICY INFORMATION

- 1. Insurance Company: \_  
Policy Number: \_\_\_\_\_
- 2. Policy Term (From) \_\_ (To) \_\_  
Endorsement Effective Date: \_\_\_\_\_
- 3. Named Insured: \_\_\_\_\_
- 4. Address of Named Insured: \_\_\_\_\_
- 5. Limit of Liability Any One Occurrence / Aggregate  
\$ \_\_\_\_\_
- 6. Deductible or Self-Insured Retention (Nil unless otherwise specified)  
\$ \_\_\_\_\_

ARTICLE 2 – POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto it is agreed as follows:

- 1. **INSURED.** The City, the Design Consultant, the Construction Manager, City Engineer, and each of their officers, partners, employees, and agents are included as additional insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured.

2. **CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the Named Insured for or on behalf of the City; or (b) products sold by the Named Insured to the City; or (c) premises leased by the Named Insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, the Design Consultant and the Construction Manager, and each of their officers, employees, and agents; or stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, the Design Consultant and the Construction Manager and each of their officers, employees, and agents shall be excess of this insurance and shall not contribute with it.
3. **SCOPE OF COVERAGE.** The policy: (1) if primary, affords coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001, Edition 1987); or (2) if excess, affords coverage which is at least as broad as the primary insurance forms referenced in the preceding Section (1).
4. **SEVERABILITY OF INTEREST.** The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.
5. **PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS.** Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, the Design Consultant and the Construction Manager and each of their officers, employees, and agents.
6. **CANCELLATION NOTICE.** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior notice by certified mail return receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.

**ARTICLE 3 – INCIDENT AND CLAIM REPORTING PROCEDURE**

Incidents and claims are to be reported to the insurer at:

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

*(Title)* *(Department)*

\_\_\_\_\_

*(Company)*

\_\_\_\_\_

*(Street Address)*

\_\_\_\_\_

*(Agency)* *(State)* *(Zip Code)*

\_\_\_\_\_

*(Telephone Number)*

**ARTICLE 4 – SIGNATURE OF INSURER OR UNDERWRITER**

I, \_\_\_\_\_ (print/type name), warrant that I have authority to bind the below listed insurance company and by my signature hereon do so bind this company. By signature below, the surety warrants that if requested by the City, it will furnish a certified copy of the certificate of authority issued by the Insurance Commissioner of the State of California.

Signature of: \_\_\_\_\_  
Insurer or Underwriter

(original signature required on endorsement furnished to the City)

ORGANIZATION: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TELEPHONE: (\_\_\_\_) \_\_\_\_\_

**\*\*END OF SECTION\*\***

*(THIS PAGE LEFT BLANK INTENTIONALLY)*

SECTION 00651

AUTO LIABILITY ENDORSEMENT (FORM B-1)

CITY OF SAUSALITO ("City")
420 Litho Street
Sausalito, CA 94965

Priority 1 Sewer Replacement Project

Project 1B: Spinnaker/Humboldt Street Sewer and Anchor Pump Station Rehabilitation

ARTICLE 1 – POLICY INFORMATION

- 1. Insurance Company:
Policy Number:
2. Policy Term (From) (To)
Endorsement Effective Date:
3. Named Insured:
4. Address of Named Insured:
5. Limit of Liability Any One Occurrence / Aggregate
\$
6. Deductible or Self-Insured Retention (Nil unless otherwise specified)
\$

ARTICLE 2 – POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto it is agreed as follows:

- 1. INSURED. The City, the Design Consultant, the Construction Manager, City Engineer, and each of their officers, partners, employees, and agents are included as additional insureds with regard to damages and defense of claims arising from ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired, or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the City, the Design Consultant and the Construction Manager and each of its officers, employees, and agents.

- 2. **CONTRIBUTION NOT REQUIRED.** As respects work performed by the Named Insured for or on behalf of the City, the insurance afforded by this policy shall: (a) be primary insurance as respects the City, the Design Consultant, and the Construction Manager and each of their officers, employees, and agents; or (b) stand in an unbroken chain of coverage excess of the Named Insured's primary coverage. In either event, any other insurance maintained by the City, the Design Consultant and the Construction Manager and each of their officers, employees, and agents shall be excess of this insurance and shall not contribute with it.
- 3. **SCOPE OF COVERAGE.** The policy affords coverage to the Named Insured, which is at least as broad as Insurance Services Office form number CA 0001 (Ed. 1/87) covering automobile liability, Code 1 ("any auto").
- 4. **SEVERABILITY OF INTEREST.** The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.
- 5. **PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS.** Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, the Design Consultant and the Construction Manager and each of their officers, employees, and agents.
- 6. **CANCELLATION NOTICE.** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior notice by Certified Mail Return Receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.

**ARTICLE 3 – INCIDENT AND CLAIM REPORTING PROCEDURE**

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
*(Title)* *(Department)*

\_\_\_\_\_ *(Company)*

\_\_\_\_\_ *(Street Address)*

\_\_\_\_\_ *(Agency)* *(State)* *(Zip Code)*

\_\_\_\_\_ *(Telephone Number)*

**ARTICLE 4 – SIGNATURE OF INSURER OR UNDERWRITER**

I, \_\_\_\_\_ (print/type name), warrant that I have authority to bind the below listed insurance company and by my signature hereon do so bind this company. By signature below, the surety warrants that if requested by the City, it will furnish a certified copy of the certificate of authority issued by the Insurance Commissioner of the State of California.

Signature of: \_\_\_\_\_  
Insurer or Underwriter

(original signature required on endorsement furnished to the City)

ORGANIZATION: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TELEPHONE: (\_\_\_\_) \_\_\_\_\_

**\*\*END OF SECTION\*\***

*(THIS PAGE LEFT BLANK INTENTIONALLY)*



## SECTION 00700

### GENERAL CONDITIONS

#### ARTICLE 1 - GENERAL

##### 1.01 CONTRACT AGREEMENT

A Bidder to whom award is made shall execute a written Agreement and required supplementary documents and submit them to the City within ten (10) days after the Notice of Award has been received by the Bidder at the address given in Section 00300, **BID FORM**. The Agreement shall be made in the form adopted by the City and incorporated in Section 00500, **AGREEMENT**.

If the lowest responsive, responsible Bidder to whom award is made fails to enter into the Contract, as herein provided, the Bidder's Security will become the property of the City, and an award may be made to the next lowest responsive, responsible Bidder, and such Bidder shall fulfill every stipulation embraced herein as if it were the party to whom the first award was made. A corporation, partnership, or joint venture to which an award is made will be required, before the Agreement is finally executed, to furnish evidence of its corporate existence and evidence that the officer signing the Agreement and bonds for the corporation is duly authorized to do so in the form as stated in Section 00100-Article 3, **BIDDER'S SIGNATURE AND AUTHORITY**.

In the event the Contractor is a joint venture of two or more contractors, the grants, covenants, provisos and claims, rights, power, privileges and liabilities of the Contract shall be construed and held to be several as well as joint. Any notice, order, direct request or any communication required to be or that may be given by the City or the Construction Manager to the Contractor under this Contract, shall be well and sufficiently given to all persons being the Contractor if given to any one or more of such persons. Any notice, request or other communication given by any one of such persons to the City or the Construction Manager under this Contract shall be deemed to have been given by and shall bind all persons being the Contractor.

If any part of the Work to be done under this Contract is subcontracted, the subcontract shall be in writing and shall provide that all work to be performed thereunder shall be performed in accordance with the terms of the Agreement. The subcontracting of any or all of the work to be done will in no way relieve the Contractor of any part of its responsibility under the Contract. Certified copies of subcontract agreements will be provided by the Contractor to the City upon request.

Equipment supplied under this Contract shall be furnished in accordance with a written agreement, and such agreement shall provide that any equipment supply shall be performed in accordance with the terms of the Contract Documents. Certified copies of agreements for equipment supply will be provided by the Contractor to the City upon request.

The Contractor shall not assign, transfer, convey, or otherwise dispose of the Contract, or its right, title, or interest therein, or its power to execute such Contract, to any other person, firm, or corporation without previous consent in writing of the City.

#### 1.02 WRITTEN NOTICE AND SERVICE THEREOF

Any notice to any party relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to said party at its last given address, or delivered in person to the said party or its authorized representative of the Work. This includes notice of change of address.

#### 1.03 RIGHTS OF ACTION

No right of action shall accrue upon or by reason of this Agreement to or for the use or benefit of anyone other than the parties to this Agreement. The parties to this Agreement are the Contractor and the City.

#### 1.04 PLANS AND SPECIFICATIONS

The Contract Documents are complementary; what is called for by one is as binding as if called for by all. It is the intent of the Drawings and Specifications to describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the requirements of the Contract Documents or from prevailing custom or trade usage as being required to produce this intended result will be furnished and performed whether or not specifically called for. When words or phrases that have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. The intent of the Drawings specifically includes the intent to depict construction that complies with all applicable laws, codes and standards. Subject to applicable law, including but not limited to California Public Contract Code Section 4100 et seq., and the terms of this Contract governing subcontracting, the Divisions and Sections of the Specifications and identifications of any Drawings shall not control Contractor in dividing the Work among subcontractors or suppliers or delineating the work to be performed by any specific trade.

Reasonably implied parts of the Work shall be performed as "incidental work" even though absent from the Drawings and Specifications. "Incidental" work shall be performed by Contractor without extra cost to the City. Incidental work includes any work not shown on Drawings nor described in the Specifications, which is necessary or required to make each installation satisfactory, legally operable, functional, consistent with the intent of the Drawings and Specifications or the requirements of the Contract Documents. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and expense thereof shall be included in the Bid Price. Incidental work includes, but is not limited to, tasks required to be performed under Division 1 **GENERAL REQUIREMENTS** of the Specifications.

Upon Notice to Proceed, the Contractor may obtain from the City, free of charge, two (2) copies of the conformed Plans (half-size) and Specifications. The Contractor may also obtain from the City, free of charge, two (2) sets of full-size prints of the Plans. Additional sets of the Plans and Specifications may be procured at the cost of printing and binding. The Owner will also provide one electronic copy of the conformed Plans and Specifications upon receipt of an executed release from the Contractor. The Owner will furnish the release form at the Contractor's request.

Both the Plans and Specifications will be conformed by incorporating all addenda which may have been issued during the bid period to the original bid documents. These "Issued for Construction" documents will be provided no later than the date of the Notice to Proceed. The "Issued for Construction" documents will be produced for the convenience and efficiency of all parties involved with construction. In the event of a discrepancy or failure to include a specific item of any addendum, the addendum as issued during the bid period shall take precedence over the "Issued for Construction" documents.

The Contractor shall keep on the work site a copy of the Plans and Specifications and shall at all times give the Construction Manager access thereto. Any Drawings included in the Specifications shall be regarded as part thereof and of the Contract. Anything mentioned in these Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in these Specifications, shall be of like effect as though shown or mentioned in both. The Construction Manager will furnish from time to time such drawings, plans, profiles, and information, as it may consider appropriate for the Contractor's guidance. Unless otherwise provided in the Contract Documents, it shall be the duty of the Contractor to see that all provisions are complied with in detail irrespective of the inspections given the work during its progress by the authorized official or its representatives. Any failure on the part of the Contractor to observe the Contract Documents will be sufficient cause for the rejection of the work at any time before its acceptance.

Wherever reference specifications are referred to in these Specifications without designation of year, the reference is to the current or revised specification effective at the time of the City receiving bids, unless otherwise referenced in Section 01060, **REGULATORY REQUIREMENTS AND PERMITS.**

#### 1.05 APPLICABILITY OF ALL PARAGRAPHS OF SPECIFICATIONS

The Technical Specifications are presented in paragraphs for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All paragraphs of the Plans and Specifications are interdependent and applicable to the Project as a whole.

The Specifications and all notes on the Drawings are directed to the Contractor and all Work shall be performed by the Contractor even though phrases such as "the Contractor shall" or "shall be done by the Contractor" are omitted. Where terms such as "approved," "acceptable," "favorably reviewed," "review," "selected," "directed," "equivalent," "equal," or "satisfactory" are used, it shall mean by or to the Construction Manager and/or Design Consultant.

## 1.06 CONTRACT INTERPRETATION BY THE CONSTRUCTION MANAGER

Any discrepancies found between the Contract Documents and site conditions or any inconsistencies or ambiguities in the Contract Documents shall be immediately reported, in writing, to the Construction Manager. Questions regarding the meaning and intent of the Contract Documents shall be referred in writing by the Contractor to the Construction Manager with a Request for Information. The Construction Manager shall respond to the Contractor in writing with a decision within fifteen (15) days of receipt of the request, or if it is necessary to extend this period, the Construction Manager shall notify the Contractor in writing as to when a decision will be provided.

Work done by the Contractor after its discovery of such discrepancies, inconsistencies or ambiguities without such notice and prior to response from the Construction Manager shall be done at the Contractor's risk.

## 1.07 ORDER OF PRECEDENCE

In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:

1. Addenda, Supplemental Agreements and Change Orders, the one dated later having precedence over another dated earlier.
2. Agreement (Section 00500)
3. Permits
4. General Requirements (Sections 01000-01999)
5. Supplementary General Conditions (Section 00800)
6. Instructions to Bidders (Section 00100)
7. General Conditions (Section 00700)
8. Project Plans
9. Technical Specifications (Section 02000 and all others following)
10. Typical Details
11. Reference/Standard Specifications
12. Reference/Standard Plans

Figure dimensions on Drawings shall govern over scaled dimensions, and detailed Drawings shall govern over general or standard Drawings.

## 1.08 BONDS

The successful Bidder shall, at the time of signing the Agreement, furnish the Bond of Faithful Performance (Section 00610) and the Payment Bond (Section 00620) executed by an admitted surety authorized to conduct business in California and be made payable to the "City of Sausalito."

The Payment Bond shall be in amount equal to one hundred percent (100%) of the Contract amount and shall be for payment of just claims for materials, equipment, labor and subcontractors employed by the Contractor thereon.

The Bond of Faithful Performance shall be in an amount equal to one hundred (100) percent of the Contract amount and shall be for the faithful performance of the Contract, and for the fulfillment of such other requirements as may be provided by Law. The performance bond shall remain in effect to guarantee the repair and replacement of defective equipment, materials, and workmanship, and payment of damages sustained by the City on account of such defects, discovered within one (1) year after final acceptance by the City, for the Work performed under the Contract which, shall remain in effect for a period of one (1) year, to guarantee the repair and replacement, and payments for damages.

Attorneys-in-fact, who sign bid bonds or contract bonds, must file with each bond a notarized and effectively dated copy of their power of attorney as required on bond forms supplied by the City for Contractor use in Sections 00610 and 00620.

The surety company shall familiarize itself with all of the conditions and provisions of this Contract, and it waives the right of special notification of any change or modification of this Contract or of extension of time, or of decreased or increased work, or of the cancellation of the Contract, or of any other act or acts by the City or its authorized agents under the terms of this Contract; and failure to so notify the aforesaid surety companies of changes shall not relieve the surety companies of their obligations under this Contract.

#### 1.09 PENALTY FOR COLLUSION

If, at any time, it is found that the person, firm, or corporation to whom the Contract has been awarded has, in presenting any Bid or Bids, colluded with any other party or parties, then the Contract may at the City's sole election be declared null and void, and the Contractor and its sureties shall be liable for loss or damage which the City may suffer thereby, and the City may advertise for new Bids.

#### 1.10 RIGHTS AND REMEDIES

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

No action or failure to act by the City, the Design Consultant, or the Construction Manager shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## ARTICLE 2 - CONTRACT ADMINISTRATION

### 2.01 ADMINISTRATION OF THE CONTRACT

The City's Representative, the Construction Manager, and the Design Consultant will provide administration of the Contract as hereinafter described. These parties are designated in Section 00800-1.05, **CONTRACT ADMINISTRATION**. If the status of any of the above parties should change, the City will provide written notice to the Contractor of such change.

In case of the termination of the employment of the Design Consultant or the Construction Manager, the City shall appoint a Design Consultant or a Construction Manager whose status under the Contract Documents shall be that of the former Design Consultant or Construction Manager, respectively.

### 2.02 CITY'S REPRESENTATIVE

- A. General -The City's Representative has the authority to act on behalf of the City on change orders, progress payments, Contract decisions, acceptability of the Contractor's work, and early possession.
- B. Change Orders - The City's Representative has the authority to accept or reject Change Orders and cost proposals submitted by the Contractor or as recommended by the Construction Manager.
- C. Progress Payments - The City's Representative has the authority to accept or reject requests for progress payments which have been submitted by the Contractor and recommended by the Construction Manager.
- D. Contract Decisions - Should the Contractor disagree with the Construction Manager's decision with respect to the Contract, the Contractor may appeal to the City's Representative in accordance with the provisions of the Contract.
- E. Acceptability of Work - The City's Representative has the authority to make the final determination of the acceptability of the Work. The City's Representative also has the authority to accept or reject the Design Consultant's recommendations regarding retention of defective work as provided.

### 2.03 CONSTRUCTION MANAGER

- A. General - The Construction Manager is a representative of the City employed to act as advisor and consultant to the City in construction matters related to the Contract. The term Construction Manager may include more than one individual to perform Contract administration and construction observation. Hereinafter, the term Construction Manager includes any and all designated representatives working under the direction of the Construction Manager.

All instructions to the Contractor and all communications from the Contractor to the City or the Design Consultant shall be forwarded through the Construction Manager. The Construction Manager will have authority to act on behalf of the City only to the extent provided in the Contract Documents. The City has

delegated its authority to the Construction Manager to make initial decisions regarding questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the work under the Contract. The Construction Manager shall interpret the intent and meaning of the Contract and shall make initial decisions with respect to the Contractor's fulfillment of the Contract and the Contractor's entitlement to compensation. The Contractor shall look initially to the Construction Manager in matters relating to the Contract.

The Construction Manager's authority to act under Section 00700-2.01, **ADMINISTRATION OF THE CONTRACT**, and any decision made by it in good faith either to exercise or not to exercise such authority, shall not be interpreted or construed as control or responsibility of any of the work performed under this Contract.

- B. Representative - The Construction Manager will observe the progress, quality, and quantity of the Work to determine, in general, if the Work is proceeding in accordance with the provisions of the Contract Documents. The Construction Manager shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work.

In accordance with the provisions detailed elsewhere in these General Conditions, the Construction Manager will make decisions relative to all matters of interpretation or execution of the Contract Documents.

- C. Observation and Inspections of Construction - The Construction Manager shall observe the construction and shall have the authority to reject work and materials which do not conform to the Contract Documents, and to require special inspection or testing.

Observation and inspection by an inspector is not an authorization to revoke, alter, or waive any requirements of the Specifications. Observation and inspection is the authorization to call the attention of the Contractor to any failure of the Work, materials or workmanship to conform to the Contract Documents. The inspector shall have this authority including the ability to reject materials or, in any emergency, suspend the Work. The Contractor may appeal any such issue which it disagrees with to the Construction Manager for decision. If the decision of the Construction Manager is not satisfactory to the Contractor, the Contractor may appeal such decision to the City's Representative.

- D. Acceptability of the Work - The Construction Manager has the authority to make a recommendation as to the acceptability of the Work.
- E. Change Orders - The Construction Manager has the authority to initiate Change Orders; to reject Change Orders proposed by the Contractor or Design Consultant; to negotiate and recommend acceptance of Change Orders; or to order minor changes in the Work at no cost to the City.

- F. Construction Schedule - The Construction Manager has the authority to review and recommend acceptance of the Progress Schedule submitted by the Contractor at the start of the Work and subsequent significant revisions for conformance to the specified sequence of work and logic.
- G. Progress Payments - The Construction Manager has the authority to recommend acceptance or rejection of requests for progress payments which have been submitted by the Contractor.
- H. Final Payment - The Construction Manager, with the assistance of the Design Consultant, will conduct inspections to determine the dates of Substantial Completion of the Work and final completion of the Work, and will receive and forward to the City, for the City's review, written warranties, and related documents required by the Contract and assembled by the Contractor.

#### 2.04 DESIGN CONSULTANT

- A. General - The Design Consultant will have the authority to act on behalf of the City only to the extent provided in the Contract Documents.
- B. Interpretations - The Design Consultant has the authority to be the initial interpreter of the technical requirements of the Contract Documents. Either party to the Contract may make written request to the Construction Manager for interpretations necessary for the proper execution or progress of the Work. The Construction Manager shall refer such written requests to the Design Consultant, who will render such interpretations. Where the Contractor has requested an interpretation from the Construction Manager, or been notified by the Construction Manager that such interpretation has been requested by the City, any work done before receipt of such interpretations, if not in accordance with same, shall be removed and replaced or adjusted as directed by the Construction Manager without additional expense to the City.
- C. Acceptability of the Work - The Design Consultant has the authority to make a recommendation as to the acceptability of the Work. The Design Consultant has the authority to recommend acceptance regarding the retention of defective work.
- D. Submittal - The Design Consultant shall receive, through the Construction Manager, shop drawings, product data and samples for review in accordance with Section 01300, **SUBMITTALS**.

The Design Consultant has the authority to review and take other appropriate action upon the Contractor's submittal such as shop drawings, product data and samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents.



## ARTICLE 3 - CITY

### 3.01 GENERAL

The City, acting through the City's Representative or the Construction Manager, shall have the authority to act as the sole judge of the Work and materials with respect to both quantity and quality as set forth in the Contract.

### 3.02 ATTENTION TO WORK

The City's, Construction Manager's and Design Consultant's representatives are designated in Section 00800-1.05, **CONTRACT ADMINISTRATION**. The Construction Manager's designated representative will normally be available at the site of the Work. An alternate representative will be designated when the designated Construction Manager's representative is not available at the site of the Work.

### 3.03 OBSERVATION AND INSPECTION

In addition to the Construction Manager's designated representative, the City may provide one or more inspectors to the Construction Manager to observe the work and with the same authority as provided for in Section 00700-2.03C, **Observation and Inspections of Construction**.

Separate and independent from the observations and inspections above, the project may be inspected by Building Officials for code compliance. Such inspectors shall have the authority provided to them by local jurisdiction.

### 3.04 CITY'S RIGHT TO USE OR OCCUPY

The City reserves the right, prior to Substantial Completion, to occupy, or use, any completed part or parts of the Work, providing these areas have been approved for occupancy by the City. The exercise of this right shall in no way constitute an acceptance of such parts, or any part of the Work, nor shall it in anyway affect the dates and times when progress payments shall become due from the City to the Contractor or in any way prejudice the City's rights in the Contract, or any bonds guaranteeing the same. The Contract shall be deemed completed only when all the Work contracted has been duly and properly performed and accepted by the City.

Prior to such occupancy or use, the City and Contractor shall agree in writing regarding the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

In exercising the right to occupy or use completed parts of the Work prior to the Substantial Completion thereof, the City shall not make any use which will materially increase the cost to the Contractor, without increasing the Contract Amount, nor materially delay the completion of the Contract, without extending the time for completion.

The part or parts of the Work, if any, which the City anticipates the use or occupancy of prior to Substantial Completion are listed below:

- None

Failure to include a part of the Work in the above referenced section, shall not limit the City's right to use or occupy parts of the Work not listed.

### 3.05 CITY'S RIGHT TO CARRY OUT THE WORK

If the Contractor should neglect to prosecute the Work properly or fail to perform any provision of the Contract, and fails within five days after receipt of written notice from the City to commence and continue correction of such neglect or deficiency with diligence and promptness, the City may, and without prejudice to any other remedy, make good such default, neglect or failure.

The City also reserves the right to perform any portion of the Work due to an emergency threatening the safety of the Work, public, City, and any property or equipment.

In either case, a Change Order shall be issued unilaterally deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies and/or for performing such work, including compensation for the Design Consultant's, the Construction Manager's, and the City's additional services made necessary by such default, neglect, failure, or emergency.

### 3.06 CITY'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

The City reserves the right to perform work related to the Project with the City's own forces, and to award separate Contracts in connection with the Project or other work on the Site. If the Contractor claims that delay, damage, or additional cost is involved because of such action by the City, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

When separate Contracts are awarded for different portions of the Project or other work on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Agreement.

The City will provide for the coordination of the work of the City's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Section 00700-4.10, **COOPERATION WITH OTHER CONTRACTORS**.

### 3.07 RESPONSIBILITY OF THE CITY

The City shall not be held responsible for the care or protection of any material or parts of the Work prior to the final Acceptance, except as expressly provided in these Specifications.

### 3.08 CITY'S RIGHT TO TERMINATE CONTRACT

See Article 00700.6.07.

## ARTICLE 4 - CONTRACTOR

### 4.01 STATUS OF CONTRACTOR AND SUBCONTRACTORS

- A. It is stipulated and agreed that the Contractor shall be an independent contractor in the performance of this Contract and shall have complete charge of persons engaged in performance of the Work. The Contractor shall perform the Work in accordance with its own methods, subject to compliance with the requirements of the Contract.
- B. Subcontractors will not be recognized as having a direct relationship with the City. The persons engaged in the Work, including employees of subcontractors and suppliers, will be considered employees of the Contractor and their work shall be subject to the provisions of the Contract. References in these Contract Documents to actions required of subcontractors, manufacturers, suppliers, or any person other than the Contractor, the City or the Construction Manager shall be interpreted as requiring that the Contractor shall require such subcontractor, manufacturer, supplier or person to perform the specified action.

The Contractor shall not employ any subcontractors that are not properly licensed in accordance with State law. Prior to commencement of any work by a subcontractor, the Contractor shall submit verification to the Construction Manager that the subcontractor is properly licensed for the work it will perform.

Contractor shall be fully responsible to City for the performance, acts and omissions of its subcontractors, and of persons directly or indirectly employed by them. Each subcontract shall expressly incorporate by reference the terms of this Contract, including the following provisions:

- Each subcontractor shall carry insurance as required by this Contract, and provide evidence of such insurance, as provided in Section 00800-2.01, **INSURANCE**.
- Each subcontractor shall be obligated to defend, indemnify, and hold the City harmless from all claims arising from the subcontractor's portion of the Work in the same manner as Contractor.
- Each subcontractor shall grant the City a license to use its drawings and design materials as provided in the Agreement.
- Each subcontract shall acknowledge the City's right to suspend or terminate the Contract, and waive any right to anticipate profits in the event of such termination.

The removal and/or substitution of any subcontractor listed in Section 00430, **DESIGNATION OF SUBCONTRACTORS**, shall be made by the Contractor and the City as provided for in Public Contract Code Section 4100 et. seq.

#### 4.02 CONTRACTOR'S REPRESENTATIVE

The Contractor shall designate in writing, before starting work, an authorized representative who shall have complete authority to represent and to act for the Contractor. Said authorized representative, or designated alternate, that has the authority to act in matters relating to the Contract, shall be personally present at the work site at all times while work is actually in progress on the Contract. During periods when work is suspended, arrangements acceptable to the Construction Manager shall be made for any emergency work that may be required. The Contractor's authorized representative, or designated alternate(s) shall be fluent and proficient in the English language in order to understand, receive, and carry out oral and written communications or instructions relating to all job functions and responsibilities.

When the Contractor consists of two or more persons, firms, partnerships, or corporations functioning on a joint venture basis, said Contractor shall designate in writing to the Construction Manager, the name of their authorized representative who shall have supreme authority to direct the Work and to whom orders will be given by the Construction Manager, to be received and obeyed by the Contractor.

Information shall include the representative's name, street address, town, and telephone number, and the mailing address if different from the street address.

The Contractor shall give its personal attention to and shall supervise the Work to the end that it shall at all reasonable times be prosecuted faithfully; and when the authorized representative or designated alternate is not personally present on the Work, the representative shall at all reasonable times be represented by a competent superintendent or foreman who shall receive and obey all instructions or orders given under this Contract, and who shall have full authority to supply materials, tools, and labor without delay, and who shall be the legally appointed representative of the Contractor. The Contractor shall be liable for the faithful observation of any instructions delivered to the Contractor or to its authorized representative.

#### 4.03 LANDS AND RIGHTS OF WAY

With the approval of the Construction Manager, the Contractor may use portions of the City's site for storage of construction equipment, materials and field offices. The City will not accept any responsibility for damage or loss of the Contractor's equipment or materials stored on any project related site caused by vandalism, nature, or otherwise, suffered by the Contractor. Protection of all construction equipment, stores, and supplies shall be the sole responsibility of the Contractor. Where additional work space is desired by the Contractor, it shall be the Contractor's sole responsibility and expense to obtain such a space for its use.

#### 4.04 FEES AND PERMITS

The requirements for fees and permits are specified in Section 01060-1.02, **FEES AND PERMITS**.

#### 4.05 COMPLIANCE WITH LAWS

The Contractor shall keep itself and its subcontractors fully informed of all existing and future legislated State and Federal Laws and City and County ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials and equipment used in the Work, or which in any way affect the conduct of the Work, and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Drawings, Specifications, or in any other part of this Contract, in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report of the same to the Construction Manager in writing. The Contractor shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the City, the Construction Manager, the Design Consultant, and all of their officers, agents, employees and servants against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor itself or by its employees.

A. Particular attention is called to the following:

1. The Contractor shall abide by and shall include in its contracts and agreements with subcontractor(s) for the performance of Work on the City's Project a copy of the provisions the California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. Eight Hour Day Limitation – In accordance with the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code, State of California, and in particular Sections 1810 to 1815 inclusive, thereof, eight (8) hours labor shall constitute a day's work and no laborer, worker, or mechanic in the employ of said Contractor, or any subcontractor doing or contracting to do any part of the Work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day, and forty (40) hours in any one calendar week unless compensated at not less than time and a half as set forth in California Labor Code Section 1815. However, if the prevailing wage determination requires a higher rate of pay for overtime than is required under said Section 1815, then the overtime rate must be paid, as specified in California Code of Regulations Title 8, Group 3, Section 16200(a)(3)(F). The Contractor and each subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the work contemplated by this Contract, which record shall be open at all reasonable hours for the inspection of the City or its officers or agents and by the Division of Labor Standards Enforcement of the Department of Industrial Relations, their deputies or agents; and it is hereby further agreed that said Contractor shall forfeit as a

penalty to the Authority, the sum of twenty-five and No/100 Dollars (\$25.00) for each laborer, worker or mechanic employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such laborer, worker or mechanic is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in one calendar week in violation of this stipulation.

- B. Prior to commencing the Work, Contractor shall comply with the provisions of Labor Code 1777.5, including but not limited to the submission of contract award information to an applicable apprenticeship program that can supply apprentices to the site of the Work. Such information shall include an estimate of journeyman hours to be performed under this Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall be submitted to the City if requested by the City.

A determination by the Chief of the Division of Apprenticeship Standard's that Contractor or its subcontractors have knowingly violated Labor Code 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. Contractor or its subcontractor, who knowingly commits a second or subsequent violation of Labor Code 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Upon the receipt of a determination that a civil penalty has been imposed by the Chief of the Division of Apprenticeship Standards, the City shall withhold the amount of the civil penalty from the next progress payment then due or to become due Contractor.

- C. Receipt of Workers' Wages, Fee for Registering or Placing Persons In Public Works - Attention is directed to the provisions of Sections 1778 and 1779 of the California Labor Code, which read as follows:

Section 1778. "Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives or conspires with another to take or receive, for its own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony."

Section 1779. "Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the state, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor."

- D. Labor Discrimination. Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for violation of this chapter."

- E. Worker's Compensation Insurance - The provisions of Section 00800-2.01B, Worker's Compensation Insurance, shall be considered as repeated herein.
- F. Lateral and Subjacent Supports - Attention is directed to Section 832 of the Civil Code of the State of California relating to lateral and subjacent supports, and wherever structures or improvements adjacent to the excavation may be damaged by such excavation, the Contractor shall comply with this law. As provided in Labor Code Section 6707, a separate bid item is provided for costs of shoring and bracing of excavations five feet or more in depth.
- G. Safety Standards - The Contractor shall comply with all applicable provisions of the Safety and Health Regulations of Construction, promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 327 et. seq.) as set forth in Title 29, C.F.R., CAL/OSHA, and the regulations issued thereunder. Compliance shall be the Contractor's sole responsibility, and neither the City, the Construction Manager nor the Design Consultant shall have any liability for non-compliance. See Section 00700-4.07, **SAFETY**, for additional safety requirements.

#### 4.06 COMPLIANCE WITH ENVIRONMENTAL LAWS

During construction, the Contractor shall comply with all pertinent requirements of Federal, State, and local environmental laws and regulations, including, but not limited to, the Federal Clean Air Act, State and local air pollution and noise ordinances, construction site erosion control regulations. Specific requirements are further specified in Section 01060, **REGULATORY REQUIREMENTS AND PERMITS**, and Section 01560, **TEMPORARY CONTROLS**.

#### 4.07 SAFETY

- A. Contractor's Safety Responsibility - The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), the California Occupational Safety and Health Act, and all other applicable Federal, State, County, and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of these Contract Documents. In the event of conflicting requirements, the most stringent requirement as it pertains to the Contractor's safety responsibility, shall apply and shall be followed by the Contractor.

No provision of the Contract Documents shall act to make the City, the Construction Manager, Design Consultant or any other party than the Contractor

responsible for safety. The Contractor agrees that for purposes of California Labor Code Section 6400 and related provisions of law the Contractor, the Contractor's privities and any other entities acting pursuant to this Contract will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities acting pursuant to this Contract and that neither the City nor the Construction Manager, Design Consultant or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be responsible for having hazards corrected and /or removed at the location(s) where the Work is to be performed. The Contractor agrees that neither the City nor the Construction Manager, Design Consultant or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees that with respect to the Work to be performed under this Contract and the location(s) where such Work is to be performed, the Contractor will be responsible for not creating hazards, and for having hazards corrected and/or removed. The Contractor agrees that through the safety obligations contained in this Contract and the Contractor's own inspection of the site(s) where the Contract Work is to be performed, the Contractor is aware and has been notified of the hazards to which the Contractor's employees may be exposed in the performance of Contract Work. The Contractor has taken and/or will take appropriate, feasible steps to protect the Contractor's employees from such hazards, and has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers. The Contractor agrees that neither the City nor the Construction Manager, Design Consultant or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities acting pursuant to this Contract.

The Contractor shall indemnify, defend and hold Owner and Construction Manager, Design Consultant and their respective officers, officials, employees, agents and volunteers or other authorized representatives harmless to the full extent permitted by law concerning liability related to the Contractor's safety obligations in accordance with Section 00800-2.01E, **Indemnification**.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Construction Manager and the City. In addition, the Contractor shall furnish the Construction Manager with a copy of the Employer's Report of Injury immediately following any incident requiring the filing of said report during the prosecution of the Work under this Contract. The Contractor shall also furnish the Construction Manager with a copy of the Employer's Report of Injury involving any subcontractors on this project. The Contractor shall make all reports as are, or may be, required by any authority having jurisdiction, and permit all safety inspections of the Work being performed under this Contract.



If a claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Construction Manager, giving full details of the claim.

- B. Safety Program - The Contractor shall establish, implement, and maintain a written injury prevention program as required by Labor Code Section 6401.7. Before beginning the Work the Contractor shall prepare and submit to the Construction Manager a Contractor Safety Program that provides for the implementation of all of the Contractor's safety responsibilities in connection with the Work at the site and the coordination of that program and its associated procedures and precautions with safety programs, precautions and procedures of each of its subcontractors and other prime Contractors performing work at the site. The Contractor shall be solely responsible for initiating, maintaining, monitoring, coordinating, and supervising all safety programs, precautions, and procedures in connection with the Work and for coordinating its programs, precautions, and procedures of the other prime contractors and subcontractors performing the Work at the site. The Safety Program should contain all the necessary elements for the Contractor to administer its program on site. At a minimum, this written Safety Program shall address the elements required by Labor Code Section 6401.7.

The Contractor's compliance with requirements for safety and/or the Construction Manager's review of the Contractor's Safety Program shall not relieve or decrease the liability of the Contractor for safety. The Construction Manager's review of the Contractor's Safety Program is only to determine if the above listed elements are included in the program.

- C. Safety Supervisor - The Contractor shall appoint an employee as safety supervisor who is qualified and authorized to supervise and enforce compliance with the Safety Program. The Contractor shall notify the Construction Manager in writing prior to the commencement of work of the name of the person who will act as the Contractor's safety supervisor and furnish the safety supervisor's resume to the Construction Manager.

The Contractor will, through and with its Safety Supervisor, ensure that all of its employees and its subcontractors of any tier fully comply with the Project Safety Policies. The Safety Supervisor shall be a full-time employee of the Contractor whose responsibility shall be for supervising compliance with applicable safety requirements on the work site and for developing and implementing safety training classes for all job personnel. The City shall have the authority to require removal of the Contractor's Safety Supervisor if the representative is judged to be improperly or inadequately performing the duties; however, this authority shall not in any way affect the Contractor's sole responsibility for performing this work safely, nor shall it impose any obligation upon the City to ensure the Contractor performs its work safely.

- D. Safety and Protection - The Contractor shall take all necessary protection to prevent damage, injury, and loss to:

- All employees on the Project, employees of all subcontractors, and other persons and organizations who may be affected thereby;
- All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the 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. The Contractor shall notify owners of adjacent property and of underground facilities and utility agencies when prosecution of the Work may affect them and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any subcontractor, supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

- E. Excavation Safety - In accordance with the provisions of Section 6705 of the Labor Code, the Contractor shall submit, in advance of excavation of any trench or trenches five feet or more in depth, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plans vary from the shoring system standards set forth in the Construction Safety Orders of the Division of Industrial Safety in Title 8, Subchapter 4, Article 6, California Code of Regulations, the plans shall be prepared and signed by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Contract for completion of the Work as set forth in the Contract Documents. Nothing in this section shall be deemed to allow the use of a shoring, bracing, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this section shall be construed to impose a tort liability on the City, the Design Consultant, the Construction Manager, nor any of their agents, consultants, or employees. The City's review of the Contractor's excavation plan is only for general conformance to the Construction Safety Orders.

Prior to commencing any excavation, the Contractor shall designate in writing to the Construction Manager the "competent person(s)" with the authority and responsibilities designated in the Construction Safety Orders.

- F. Safety Emergencies - In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor, without special

instruction or authorization from the Construction Manager, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Construction Manager prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

- G. Safety Violations - Should the Contractor fail to correct a condition, the City shall have the right to notify the Contractor through the Construction Manager that an unsafe condition may exist and must be corrected or the work in question can be stopped in accordance with Section 00700-6.06, **SUSPENSION OF WORK**, until the condition is corrected to the satisfaction of the City. No extension of time or additional compensation will be granted as a result of any stop order so issued. The notification and suspension of such work or the failure to provide such notification and suspension by the City shall not relieve the Contractor of its sole responsibility and liability for safety.

The City shall have the authority to require the removal from the project of the foreman and/or superintendent in responsible charge of the work where safety violations occur.

- H. Equipment Safety Provisions - The completed Work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items, required by the State and Federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the Work, including City-selected equipment, subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. All equipment furnished shall be electrically grounded and provided guards and protection as required by safety codes. Where vapor-tight or explosion-proof electrical installation is required by safety codes, this shall be provided. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. The Contractor shall notify all equipment suppliers and subcontractors of the provisions of this paragraph.

- I. Confined Spaces – The Work requires work in confined spaces and requires compliance with CAL/OSHA and Federal OSHA requirements. Confined spaces for the purposes of this section shall be as defined by the Division of Industrial Safety. Notwithstanding any classifications relative to the Tunnel Safety Orders, work within confined spaces of this project is subject to the definitions and applicable provisions of Section 5156 et. seq., Title 8, Division 1, Chapter 4, Subchapter 7, Group 16, Article 108 of California Code of Regulations. Including exposure to hydrogen sulfide, methane, carbon dioxide and other gases and vapors commonly found in municipal sewers which could have, or has the potential of having Immediate Danger to Life or Health Conditions (IDLH).

- J. Public Safety and Convenience - The Contractor shall conduct his work so as to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work and to ensure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Construction Manager and the proper governmental authority. Fire hydrants on or adjacent to the work shall be accessible to fire fighting

equipment. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

#### 4.08 PROVISIONS FOR HANDLING EMERGENCIES

It is possible that emergencies may arise during the progress of the Work that may require special treatment or make advisable extra shifts of labor forces to continue the Work for twenty-four (24) hours per day. These emergencies may be caused by damage or possible damage to nearby existing structures or property by reason of the Work under construction, or by storm, accidents, or leakage. The Contractor shall be prepared in case of such emergencies to make all necessary repairs and shall promptly execute such work when required by the Construction Manager. The determinations made by the Construction Manager for handling emergencies shall be final and conclusive upon the parties.

Upon start of the Work, Contractor shall provide means for immediate emergency notification of Contractor's designated representative and designated emergency alternates.

#### 4.09 NONSTANDARD WORKING HOURS

The Contractor may be required to prosecute the Work at night or outside of the normal working hours defined in Section 01560-1.07, **WORKING HOURS**. Such work may be required due to project and/or operational constraints as defined in Section 01010, **SUMMARY OF WORK**, or if emergencies arise as provided for in Section 00700-4.08, **PROVISIONS FOR HANDLING EMERGENCIES**. When required, ordered, or permitted to work at night, the Contractor shall provide sufficient and satisfactory lighting and other facilities therefore. For work outside of the normal working hours, the Contractor shall receive no extra payment, but compensation shall be considered as having been included in the price stipulated for the Work, except for authorized work performed outside of the Contract requirements.

#### 4.10 COOPERATION WITH OTHER CONTRACTORS

This Paragraph shall serve as notice to the Contractor that the City may let other contracts for other work at or near the site of this Work. The Contractor shall afford other contractors reasonable opportunity for the delivery and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work or in the vicinity of the Work to be done under this Contract, the Contractor shall so conduct its operations as to interfere to the least possible extent with the Work of such other forces or contractors.

Any difference or conflicts which may arise between the Contractor and any other forces or contractors, creating delays or hindrance to each other, shall be adjusted as determined by the Construction Manager.

Section 01010, **SUMMARY OF WORK**, indicates anticipated other potential construction activities within or adjacent to Work to performed in this Contract.

## **ARTICLE 5 - CONTROL OF WORK AND MATERIAL**

### **5.01 MEANS, METHODS AND APPLIANCES**

The means, methods and appliances adopted by the Contractor shall be planned and executed to, in the opinion of the Construction Manager, produce the highest grade quality of work and will enable the Contractor to complete the Work in the time agreed upon. The City and Construction Manager shall not supervise, direct, or have control over, or be responsible for, Contractor's means, methods and appliances of construction or for the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of Work. However, if at any time the means, methods and appliances appear inadequate or of inferior quality, the Construction Manager may order the Contractor to improve their character or efficiency, and the Contractor shall conform to such order; failure of the Construction Manager to order such improvement of methods of efficiency will not relieve the Contractor from its obligation to perform satisfactory work and to finish it in the time agreed upon.

### **5.02 CHARACTER OF WORKERS**

None but competent forepersons and workers shall be employed on work requiring special qualifications; and, when required by the Construction Manager, the Contractor shall remove from the work any person who commits trespass, or is, in the opinion of the Construction Manager, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. Such discharge shall not be the basis of any claim for compensation or damages against the Construction Manager, the City, or any of its officers or representatives.

### **5.03 MATERIALS AND WORKMANSHIP**

Unless otherwise indicated in these Specifications, materials and equipment for the construction work shall be the best grade in quality of a manufacturer regularly engaged in the production of such materials and equipment or materials and equipment of comparable character. All materials must be of the specified quality and equal to approved samples, if samples have been submitted. All work shall be done and completed in the best workmanlike manner, obtainable in the local market. All permanent materials and equipment shall be new unless otherwise specified.

Notwithstanding any omission from these Specification or the Drawings it shall be the duty of the Contractor to call the Construction Manager's attention to apparent errors or omissions and request instructions before proceeding with the Work. The Construction Manager may, by appropriate instructions correct errors and supply omitted information. Such instructions shall be as binding upon the Contractor as though contained in the original Specifications or Drawings.

All defective work or materials shall be promptly removed from the premises by the Contractor, whether in place or not, and shall be replaced or renewed in such manner as the Construction Manager may direct. All materials and workmanship of whatever description shall be subjected to the inspection of, and rejection by, the Construction Manager if not in conformance with the Contract Documents.

Any defective material or workmanship, or any unsatisfactory or imperfect work which may be discovered before the final Acceptance of the Work or within one (1) year thereafter, shall be corrected immediately on the requirement of the Construction Manager, without extra charge, notwithstanding that it may have been overlooked in previous inspections and estimates. Failure to inspect work shall not relieve the Contractor from any obligation to perform sound and reliable work as herein described.

#### 5.04 EXISTING UTILITIES

- A. General - The location of known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the Project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the site of the construction.

The City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the construction site if such utilities are not identified by the City in the Contract Documents or which can reasonably be inferred from the presence of other visible facilities.

- B. Utility Location - It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this section.

Pursuant to Government Code Section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days before, but not more than 14 calendar days prior to commencing any excavation. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service.

After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit. The Construction Manager shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown in the Contract Documents, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such

grade as to clear all existing facilities which are to remain in service for any period subsequent to the construction of the run of pipe involved.

- C. Utility Relocation and Repair - If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Construction Manager in writing. The Construction Manager will supply a method for correcting said interferences in accordance with the responsibilities of this section and Government Code Section 4215.

The City shall compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk-line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Section 00700-7.01, **CHANGE ORDERS**. The Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay is caused by the failure of the City or utility company to provide for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Section 01310-1.06, **TIME IMPACT ANALYSES**.

The public utility, where they are the owner of the effected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the City and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

When the Contract indicates that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Contract.

Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

## ARTICLE 6 - PROGRESS OF THE WORK

### 6.01 COMMENCEMENT OF WORK

Within thirty (30) calendar days after receipt of the required bonds and evidences of insurance and the executed Agreement from the Contractor, written Notice to Proceed will be given by the City to Contractor. Notwithstanding other provisions of the Contract, the Contractor shall not be obligated to perform work, and the City shall not be obligated

to accept or pay for work performed by the Contractor, prior to Notice to Proceed. The Contractor shall provide the required Contract bonds and evidences of insurance prior to Notice to Proceed and commencing work at the Site.

The Contractor shall commence the Work covered by this Contract within ten (10) days after the date established in the Notice to Proceed for the commencement of Contract Time.

The Contractor shall give the Construction Manager written notice not less than two (2) working days in advance of the actual date on which the work will be started. The Contractor shall be entirely responsible for any delay in the Work, which may be caused by its failure to give such notice.

## 6.02 CONTRACT TIME

Time shall be of the essence of the Contract. The Contractor shall prosecute the Work so that the various portions of the project shall be Substantially Complete and ready for use within the time specified in Section 00800-1.01, **TIME ALLOWED FOR COMPLETION**. It is expressly understood and agreed by and between the Contractor and the City that the Contract time for completion of the Work described herein is a reasonable time taking into consideration the average climatic and economic conditions and other factors prevailing in the locality and the nature of the Work. The Contractor is hereby advised that the Contractor's Bid is to be based on the entire Contract Time and the Contractor shall include its field and home office overhead costs in the Bid for the entire Contract Time.

## 6.03 DELAYS

- A. Notice of Delays - When the Contractor foresees a delay in the prosecution of the Work and, in any event, immediately upon the occurrence of a delay, the Contractor shall notify the Construction Manager in writing of the probability of the occurrence and the estimated extent of the delay, and its cause. The Contractor shall take immediate steps to prevent, if possible the occurrence or continuance of the delay. The Contractor agrees that no claim shall be made for delays, which are not called, to the attention of the Construction Manager at the time of their occurrence.
- B. Non-Excusable Delays - Non-excusable delays in the prosecution of the Work shall include delays which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors, at any tier level, or suppliers. The Contractor shall receive no compensation for such delay.
- C. Excusable Delays - Excusable delays in the prosecution or completion of the Work shall include delays which result from causes beyond the control of the Contractor and City and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors, at any tier level, or suppliers. The Contractor shall receive no compensation for such delay. Excusable delays are as further defined below.



1. Abnormal Delays - Delays caused by acts of god, fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and shortages of materials shall be considered as excusable delays insofar as they prevent the Contractor from proceeding with at least seventy-five (75) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest Favorably Reviewed Progress Schedule.
  2. Weather Delays - Should inclement weather conditions or the conditions resulting from weather prevent the Contractor from proceeding with seventy-five (75) percent of the normal labor and equipment force engaged in the current critical activity item for a period of at least five (5) hours per day toward completion of such operation or operations, and the crew is dismissed as a result thereof, it shall be a weather delay day.
  3. Material Shortages - Upon the submission of satisfactory proof to the Construction Manager by the Contractor, shortages of material may be acceptable as grounds for granting a time extension. In order that such proof may be satisfactory and acceptable to the Construction Manager, it must be demonstrated by the Contractor that the Contractor has made every effort to obtain such materials from all known sources within reasonable reach of the proposed Work. Only the physical shortage of material, caused by unusual circumstances, will be considered under these provisions as a cause for extension of time, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the Construction Manager that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and usual practices in obtaining such quantities. A time extension for shortage of material will not be considered for material ordered or delivered late or whose availability is affected by virtue of the mishandling of procurement. The above provisions apply equally to equipment to be installed in the Work.
- D. Compensable Delays - Compensable delays in the prosecution or completion of the Work shall include delays that occur through no fault of the Contractor and prevent the Contractor from proceeding with at least seventy-five (75) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest Favorably Reviewed Progress Schedule due to the following cause(s):
1. Delays due solely to the actions and/or inactions of the City.
  2. Delays due to differing site conditions as defined in Section 00700-7.02, **DIFFERING SITE CONDITIONS**.
  3. Delays due to other contractors employed by the City who interfere with the Contractor's prosecution of the Work as defined above.

- E. Concurrent Delays - Concurrent delays are those delay periods when the prosecution of the Work is delayed during the same period of time due to causes from a combination of the delays defined in Sections 00700-6.03B, **Non-Excusable Delays**, 00700-6.03C, **Excusable Delays**, or 00700-6.03D, **Compensable Delays**. During such concurrent delay periods, time extensions will be granted in accordance with Section 00700-6.04, **TIME EXTENSIONS**; however, the Contractor shall not be compensated for its overhead costs as defined in Section 00700-6.04C, **Indirect Overhead**, and the City shall not assess its actual costs as defined in Section 00700-6.04A, **Non- Excusable Delays**.

#### 6.04 TIME EXTENSIONS

- A. Non-Excusable Delays - The City, at its sole option, may grant an extension to milestone or completion dates for non-excusable delays. If the City grants an extension of time for non-excusable delays, the Contractor agrees to pay the City's actual costs, including charges for engineering, inspection and administration incurred during the extension.
- B. Excusable or Compensable Delays - If the Contractor is delayed in the performance of its Work as defined in Sections 00700-6.03C, **Excusable Delays**, or 00700-6.03D, **Compensable Delays**, then milestone and Contract completion dates may be extended by the City for such time that, in the City's and Construction Manager's determination, the Contractor's completion dates will be delayed, provided that the Contractor strictly fulfills the following:
1. The Contractor shall provide notification, in accordance with Section 00700-6.03A, **Notice of Delays**, and submit in writing a request for an extension of time to the Construction Manager stating at a minimum the probable cause of the delay and the number of days being requested. The time extension request shall be submitted in accordance with the requirements of Section 01310-1.06, **TIME IMPACT ANALYSES**.
  2. If requested by the Construction Manager, the Contractor shall promptly provide sufficient information to the Construction Manager to assess the cause or effect of the alleged delay, or to determine if other concurrent delays affected the Work.
  3. Weather Delays - The Contractor will be granted a non-compensable time extension for weather caused delays, pursuant to Section 00700-6.03 C2, **Weather Delays**, over and above an allowance as provided for in Section 00800-1.03, **WEATHER DAYS**. No time extensions for weather delays will be granted until the total number of weather days exceeds this allowance.

Should the Contractor fail to fulfill any of the foregoing, which are conditions precedent to the right to receive a time extension, the Contractor waives the right to receive a time extension.

During such extension of time, neither extra compensation for engineering, inspection, and administration nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and City that time extensions due to excusable or compensable delays will be granted only if such delays involve controlling operations which would prevent completion of the whole Work within the specified Contract time.

Should the Contractor fail to complete the Work within the time specified in the Contract, as extended in accordance with this clause if appropriate, the Contractor shall pay to the City liquidated damages in accordance with Section 00700-6.05, **LIQUIDATED DAMAGES**.

- C. Indirect Overhead - The Contractor may be entitled to reimbursement of indirect overhead expenses for periods of time when the Work is delayed as defined in Section 00700-6.03D, **Compensable Delays**. Reimbursement for indirect overhead shall not be made for concurrent delays as defined in Section 00700-6.03E, **Concurrent Delays**.

The compensation described in Section 01035-1.05, **MARK-UP ALLOWANCES**, includes provisions for reimbursement of indirect overhead expenses for Change Order work. Compensation as described in this section shall reasonably consider the indirect overhead included in the Mark-Up Allowance, as follows:

1. If City and Contractor agree that the Mark-Up Allowance does not provide sufficient compensation for a compensable delay associated with changed work, this section shall apply.
2. Upon application of this section, an amount equal to the entire Mark-Up Allowance for all Change Order work shall be deducted from the indirect overhead compensation as calculated based on Sections 00700 6.04 C3 (Indirect Field Overhead) and 6.04 C4 (Indirect Home Office Overhead) below.

As a condition precedent to any reimbursement of indirect overhead expense, the Contractor must fulfill all conditions as provided in Section 00700-6.04B, **Excusable or Compensable Delays**. No additional markup for overhead or profit shall be provided for such reimbursable indirect overhead expenses.

Payment to the Contractor for indirect overhead expenses will be made only for the extended Contract time granted for compensable delay(s) which meet the following criteria: The compensable delay(s) period is (are) required to complete the Work following the entire depletion of the original Contract time plus any time extensions granted for delays other than compensable time extensions.

3. Indirect Field Overhead - For those allowable delay periods as defined in Section 00700-6.04C, **Indirect Overhead**, the Contractor shall be reimbursed for its indirect field overhead based on:

- a. Actual invoice costs for on-site field offices and temporary utilities as described in Section 01560, **TEMPORARY CONTROLS**, and Section 01510, **TEMPORARY UTILITIES**.
  - b. Actual indirect labor costs, as determined consistent with Section 01035-1.03, **FORCE ACCOUNT PAYMENT**, for field office staff.
  - c. Fair rental values acceptable to the Construction Manager as described in Section 01035-1.03, **FORCE ACCOUNT PAYMENT**, for construction equipment idled due to the delay.
4. Indirect Home Office Overhead - For those allowable delay periods as defined in Section 00700-6.04C, **Indirect Overhead**, the Contractor shall be reimbursed for its unabsorbed home office overhead based on the following formula:

$$\frac{\text{ContractAwardAmount}(\$)}{\text{OriginalContractTime}(\text{Days})} * 0.03 = \text{DailyHomeOfficeOverhead}(\$ / \text{day})$$

The Contract Award Amount is the total amount in the executed Agreement (Section 00500). The Contract Time is as provided in Section 00800-1.01, **TIME ALLOWED FOR COMPLETION**.

As it is impractical to determine the actual home office overhead, such reimbursement shall constitute full payment for any and all home office overhead expenses for such periods of time for the Contractor and all subcontractors, whether greater or less than actual. Distribution of the markup amount among the Contractor and all subcontractors and suppliers is the responsibility of the Contractor.

## 6.05 LIQUIDATED DAMAGES

- A. Owner and the Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in Section 00800-1.01, **TIME ALLOWED FOR COMPLETION**, and required milestone work in Section 00800-1.02 herein, plus any extensions thereof allowed in accordance with Section 00700-6.04 of the General Conditions. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the Owner will sustain in the event of and by reason of the 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 Section 00800-1.01 herein and/or as specified for completion of any scheduled operations or works described in Section 00800-1.02. It is, therefore, agreed in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the Owner liquidated damages in the amount set forth in Section 00800-1.02, **DAMAGES FOR DELAYS**, per day for each and every calendar day that expires after the time for completion specified in Section 00800-1.01 herein and/or as specified for completion of any scheduled operations or works described in Section 00800-1.02 except as otherwise

provided by extension of time pursuant to Section 00700-6.04 of the General Conditions. 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 the Owner may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor.

- B. Liquidated damages will continue to accrue at the stated rate until Substantial Completion of the Work. Accrued liquidated damages may be deducted by the Owner from amounts due or that become due to the Contractor for performance of the Work. Liquidated damages may not be waived or reduced by the Owner unless expressly waived or reduced in writing by the Construction Manager.

#### 6.06 SUSPENSION OF WORK

- A. If the Contractor fails to correct defective work as required by Section 00700-5.03, **MATERIALS AND WORKMANSHIP**, or fails to carry out the Work in accordance with the Contract Documents or any other applicable rules and regulations, the City, by a written order of the City's representative or signed personally by an agent specifically so empowered by the City, in writing, may order the Contractor to stop the Work, or any portion thereof. The suspension of Work shall remain in effect until the cause for such order has been eliminated. This right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity. All delays in the Work occasioned by such stoppage shall not relieve the Contractor of any duty to perform the Work or serve to extend the time for its completion. Any and all necessary corrective work done in order to comply with the Contract Documents shall be performed at no cost to the City. The City's concurrence that the condition or cause has been eliminated will be provided in writing to the Contractor.
- B. In the event that a suspension of Work is ordered, as provided in this paragraph, the Contractor, at its expense, shall perform all work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public, pedestrian, and vehicular traffic, during the period of such use by suspension. Should the Contractor fail to perform the Work as specified, the City may perform such work and the cost thereof may be deducted from monies due the Contractor under the Contract.
- C. The City shall also have authority to suspend the Work wholly or in part, for such period as the City may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for the City's own convenience. Such temporary suspension of the Work will be considered justification for time extensions to the Contract in an amount equal to the period of such suspension if such suspended work includes the current critical activity on the latest Favorably Reviewed Progress Schedule. The Contractor as directed by the City shall provide the provisions as stipulated in Section 00700-6.06, **SUSPENSION OF WORK**, above. Such additional work shall be

compensated as provided for in Section 00700-Article 7, **CHANGES IN THE WORK.**

#### 6.07 RIGHT TO TERMINATE CONTRACT

If at any time the Contractor is determined to be in material breach of the Contract, notice thereof in writing will be served upon the Contractor and its sureties, and should the Contractor neglect or refuse to provide means for a satisfactory compliance with the Contract, as directed by the Construction Manager, within the time specified in such notice, the City or the City's Representative in such case shall have the authority to terminate the operation of the Contract.

Upon such termination, the Contractor shall discontinue the Work, or such parts of it as the City may designate. Upon such termination, the Contractor's control shall terminate and thereupon the City or its fully authorized representative may take possession of all or any part of the Contractor's materials, tools, equipment, and appliances upon the premises and use the same for the purposes of completing the Work and hire such force and buy or rent such additional machinery, tools, appliances, and equipment, and buy such additional materials and supplies at the Contractor's expense as may be necessary for the proper conduct of the Work and for the completion thereof; or the City may employ other parties to carry the Contract to completion, employ the necessary workers, substitute other machinery or materials and purchase the materials contracted for, in such manner as the City may deem proper; or the City may annul and cancel the Contract and reissue the Work or any part thereof. Any excess of cost arising therefrom over and above the Contract price will be charged against the Contractor and its sureties, who will be liable therefore.

In the event of such termination, all monies due the Contractor or retained under the terms of this Contract shall be held by the City; however, such holdings will not release the Contractor or its sureties from liability for failure to fulfill the Contract. Any excess cost over and above the Contract amount incurred by the City arising from the termination of the operations of the Contract and the completion of the Work by the City as above provided shall be paid for by the Contractor. The Contractor shall be entitled to credit against such excess costs and contract funds held by the City. Any contract funds remaining after all valid claims for completion of the Work have been paid, shall be paid to the Contractor sixty (60) days after completion of the Work.

If at any time before completion of the Work under the Contract, it shall be determined by the City that it impossible, impractical, undesirable, or otherwise against the interests of the City to complete the Work, or if the Work shall be stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, the City may, upon ten (10) days written notice to the Contractor, discontinue the Work and terminate the Contract for its convenience. Upon service of such notice of termination, the Contractor shall discontinue the Work in such manner, sequence, and at such times as the Construction Manager may direct. The Contractor shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the work thus dispensed with, nor any other claim except for the work actually performed up to the time

of discontinuance, including any extra work ordered by the Construction Manager to be done, nor for any claim for liquidated damages.

## ARTICLE 7 - CHANGES IN THE WORK

### 7.01 CHANGE ORDERS

- A. Without invalidating the Contract and without notice to sureties or insurers, the City through the Construction Manager, may at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Directive, Field Order, or Change Order. A Change Order will not be issued for a Field Directive unless the Construction Manager concurs with an appeal by the Contractor that such Field Directive is a change in the scope of the Contract. The Contractor shall comply promptly with the requirements for all Change Orders, Field Orders, or Field Directives. The work involved in Change Orders shall be executed under the applicable conditions and requirements of the Contract Documents. If any Field Order causes an increase or decrease in the Contract Amount or an extension or shortening of the Contract Time, an equitable adjustment will be made by issuing a Change Order. By the acceptance of a Change Order, the Contractor waives any claim for additional time, not included in the Change Order, for the work covered by that Change Order. Additional or extra work performed by the Contractor without written authorization of a Field Order or Change Order will not entitle the Contractor to an increase in the Contract Amount or an extension of the Contract Time.
- B. Compensable extra work shall be that work required for the completed project, but not shown or detailed on the Contract Drawings, and not called for in the Contract Documents, and not constituting "incidental work" as defined in Section 00700-1.04, **PLANS AND SPECIFICATIONS**. Such work shall be governed by all applicable provisions of the Contract Documents. In giving instructions, the Construction Manager shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the purposes of the Work; but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the City through the Construction Manager, and no claim for an addition to the total amount of the Contract shall be valid unless so ordered.
- C. In case any change increases or decreases the work shown, the Contractor shall be paid for the work actually done at a mutually agreed upon adjustment to the Contract price, based upon the provisions of Section 01035, **MODIFICATION PROCEDURES**.
- D. If the Contractor refuses to accept a Change Order, the City may issue it unilaterally. The Contractor shall comply with the requirements of the Change Order. The City shall provide for an equitable adjustment to the Contract, and compensate the Contractor accordingly. If the Contractor does not agree that the adjustment is equitable, it may submit a claim in accordance with Section 00700-7.03, **RESOLUTION OF DISPUTES**.

## 7.02 DIFFERING SITE CONDITIONS

Pursuant to Public Contract Code Section 7104, the Contractor shall promptly, and before such conditions are disturbed, notify the Construction Manager in writing, of any:

- A. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I disposal site in accordance with provisions of existing law.
- B. Subsurface or latent physical conditions at the site differing from those indicated in the Contract documents.
- C. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

The City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work the City shall cause to be issued a Change Order under the procedures provided in Section 00700-7.01, **CHANGE ORDERS**.

In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties, Section 00700-7.03, **RESOLUTION OF DISPUTES**.

No claim of the Contractor under this clause shall be allowed unless the Contractor has promptly given the notice required.

## 7.03 RESOLUTION OF DISPUTES

It is the intent of this Contract that disputes regarding the Contract be resolved promptly and fairly between the Construction Manager and Contractor. However, it is recognized that some disputes will require detailed investigation and review by one or both parties before a determination and resolution can be reached. For the protection of the rights of both the Contractor and the City the following provisions are provided for the resolution of disputes which cannot be resolved by the Contractor and Construction Manager within two days after either party should bring verbal notice of dispute or potential dispute to the other's attention and prior to the commencement of such work.

- A. Notice - If the Contractor disagrees with the Construction Manager's decision in Section 00700-1.06, **CONTRACT INTERPRETATION BY THE CONSTRUCTION MANAGER**, or in any case where the Contractor deems additional compensation or a time extension to the Contract period is due the Contractor for work or materials not covered in the Contract or which the



Construction Manager has not recognized as extra work, the Contractor shall notify the Construction Manager, in writing, of its intention to make claim. Notice pertaining to decisions provided in Section 00700-1.06, **CONTRACT INTERPRETATION BY THE CONSTRUCTION MANAGER**, or such other determinations by the Construction Manager shall be filed in writing to the Construction Manager within ten (10) days of receipt of such decision and prior to the commencement of such work. All other notices for extra work shall be filed in writing to the Construction Manager prior to the commencement of such work. Written notice shall use the words "Notice of Potential Claim". Such Notice of Potential Claim shall state the circumstances and the reasons for the claim, but need not state the amount.

Additionally, no claim for additional compensation or extension of time for a delay will be considered unless the provisions of Sections 00700-6.03, **DELAYS**, and 6.04, **TIME EXTENSIONS**, are complied with. No claim filed after the date of final payment will be considered.

Unless notice is properly given, the Contractor shall not recover costs incurred by it as a result of the alleged extra work, changed work or other situation which had proper notice been given would have given rise to a right for additional compensation. The Contractor should understand that timely notice of potential claim is of great importance to the Construction Manager and the City, and is not merely a formality. Such notice allows the City to consider preventative action, to monitor the Contractor's increased costs resulting from the situation, to marshal facts, and to plan its affairs. Such notice by the Contractor, and the fact that the Construction Manager has kept account of the work in question, shall not in any way be construed as proving the validity of the claim.

- B. Response by Construction Manager - The Construction Manager shall review the "Notice of Potential Claim" and within ten (10) days of receipt of the notice shall respond to the Contractor in writing with its determination, or if it is necessary to extend this period, the Construction Manager shall notify the Contractor in writing as to when a decision will be provided.
- C. Appeals to the City's Representative - In the event the Contractor disagrees with any determination of the Construction Manager provided in accordance with Section 00700-7.03B, **Response by Construction Manager**, the Contractor may, within ten (10) days of receipt of such determination, appeal the determination to the City's Representative for review. The City's Representative shall review the appeal and transmit the decision in writing to the Contractor within thirty (30) days from the date of receipt of the appeal. Failure of the Contractor to appeal the determination of the Construction Manager within said ten (10) day period shall constitute a waiver of the Contractor's right to thereafter assert claim resulting from such determination or decision.

In the event the Contractor disagrees with the determination of the City's Representative, the Contractor shall notify the Construction Manager, in writing within ten (10) days of receipt of such determination, of its intention to make claim in accordance with Section 00700-7.03G, **Resolution of Claims**.

- D. Records of Disputed Work - In proceeding with a disputed portion of the Work, the Contractor shall keep accurate records of its costs and shall make available to the Construction Manager, a daily summary of the hours and classification of equipment and labor utilized on the disputed work, as well as a summary of any materials or any specialized services which are used. Such information shall be submitted to the Construction Manager on a monthly basis, receipt of which shall not be construed as an authorization for or acceptance of the disputed work.
- E. Submission of Claim Costs - Within thirty (30) days after the last cost of work for which the Contractor contends it is due additional compensation is incurred, but if costs are incurred over a span of more than thirty (30) days, then within fifteen (15) days after the thirtieth (30<sup>th</sup>) day and every month thereafter, the Contractor shall submit to the Construction Manager, as best the Contractor is able, its costs incurred for the claimed matter. Claims shall be made in itemized detail and should the Construction Manager be dissatisfied with the format or detail of presentation, upon request for more or different information, the Contractor will promptly comply, with the satisfaction of the Construction Manager. If the additional costs are in any respect not knowable with certainty, they shall be estimated as best can be done. The Construction Manager shall have the right as provided in Section 01035-1.07, **COST PRICING DATA AND ACCESS TO RECORDS**, to review the Contractor's records pertaining to a submitted claim. In case the claim is found to be just, it shall be allowed and paid for as provided in Section 01035, **MODIFICATION PROCEDURES**.
- F. Claim Meetings - From time to time the Contractor may request or the Construction Manager may call a special meeting to discuss outstanding claims should it deem this a means of possible help in the resolution of the claim. The Contractor shall cooperate and attend prepared to discuss its claims, making available the personnel, subcontractors and suppliers necessary for resolution, and all documents which may reasonably be requested by the Construction Manager.
- G. Resolution of Claims - Claims pertaining to this Agreement for three hundred and seventy-five thousand dollars (\$375,000) or less which cannot be resolved between the parties shall be resolved pursuant to the provisions of Public Contract Code commencing at Section 20104.
1. Claims Not Exceeding \$375,000 - Said Code sections provide in part that: Under the law (starting at Public Contract Code Section 20104.2) construction claims of \$375,000.00 or less on local public agency construction contracts must be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment.
- The City must respond in writing to any written claim of three hundred seventy-five thousand dollars (\$375,000) or less within sixty (60) days [or, in the case of claims of less than fifty thousand dollars (\$50,000), within forty-five (45) days] of receipt of claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant.

If additional information is thereafter required, it shall be requested and provided, pursuant to Public Contract Code Section 20104.2, upon mutual agreement of the City and the claimant.

The City's written response to the claim, as further documented, shall be submitted to the claimant within thirty (30) days [or, for claims of less than \$50,000, within fifteen (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 or requested documentation, whichever is greater.

If the claimant disputes the City's written response (or if the City fails to respond within the time periods prescribed above) the claimant may notify the City, in writing, within fifteen (15) days of receipt of the City's response or within fifteen (15) days of the City's failure to respond within the times prescribed, respectively, and demand an informal settlement conference. The City must then schedule a settlement conference within thirty (30) days.

Following the settlement conference, if the claim or any portion remains in dispute, the claimant may file a claim as required by the claims statute commencing at California Government Code Section 910. The time within which a Government Code claim must be filed is tolled from the time the claimant submits the Public Contract Code claim until the time when the claim is denied.

2. Claims Exceeding \$375,000 - Unless this Contract provides otherwise, all claims between the City and the Contractor that are not resolved between the parties and are not governed by Public Contract Code Section 20104 shall be resolved according to the procedures established in Public Contract Code Section 20104 with the following exceptions:
  - a. The City must respond in writing to any written claim greater than three hundred seventy-five thousand dollars (\$375,000) within sixty (60) days of receipt of the claim, or may request in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant, or may advise the Contractor in writing within thirty (30) days of receipt of the claim when the review and response to the claim will be furnished.
  - b. The arbitration proceedings established in Public Contract Code Section 20104.4(b) and specified in Section 00700-7.03 G3, **Civil Action Proceedings**, shall only apply if both the City and Contractor mutually agree to arbitration.

3. Civil Action Proceedings - If a civil action is filed to resolve the claim, then between thirty (30) and sixty (60) days after the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by the parties. The parties are given fifteen (15) days to select a disinterested third person as mediator. Mediation must commence within thirty (30) days of submittal and conclude within fifteen (15) days of commencement unless the time is extended for good cause by the court.
- Mediation of Disputes - All disputes among the parties arising under this Agreement shall be mediated before resorting to arbitration or Court action. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial neutral mediator who is authorized to facilitate the resolution of the dispute but who is not empowered to impose a settlement on the parties. The mediation fee, if any, shall be divided equally among the parties. Before the mediation begins, the parties agree to sign a document limiting the admissibility and arbitration or any civil action of anything said, any admission made, and any documents prepared in the course of the mediation, consistent with Evidence Code Section 1152.5 or any successor statute. The filing of a judicial action to enable the imposition of a receivership, injunction or other provisional remedy shall not constitute a waiver of the right to mediate under this provision. The mediation shall take place in Marin County, California. The mediator shall, when possible, be experienced in construction law.

If the matter remains in dispute, the case must be submitted to judicial arbitration pursuant to procedures set forth in the Code of Civil Procedure commencing at Section 1141.10. Discovery is permitted consistent with the rules pertaining to judicial arbitration.

Arbitration of Disputes - All disputes among the parties arising under this Agreement which are not settled through mediation shall be decided by neutral binding arbitration and not by Court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules of either the American Arbitration Association (AAA) or Judicial Arbitration and Mediation Services, Inc. (JAMS). The selection between AAA and JAMS rules shall be made by the claimant first filing for the arbitration. The parties to arbitration may agree in writing to use different rules and/or arbitrators. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The parties shall have the right to discovery in accordance with Code of Civil Procedure Section 1283.05. The filing of a judicial action to enable the imposition of a receivership, injunction or other provisional remedy shall not constitute a waiver of the right to arbitrate under this provision. The arbitration shall take place in Marin County, California. The arbitrator, if possible, shall be familiar with construction law.

A party who appeals an arbitration award and does not obtain a more favorable judgment shall pay the attorney's fees on appeal of the other party. The City must pay interest at the legal rate on any arbitration award or judgment, commencing on the date when suit was filed. Except as otherwise provided in the Contract, the City must pay the undisputed portions of any claims.

Should either party to this Contract bring legal action against the other, the case shall be handled by a court of competent jurisdiction in Marin County, California.

## ARTICLE 8 - PAYMENT

### 8.01 BASIS OF PAYMENT

- A. General - The Contractor shall accept the compensation, as herein provided, as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed Work and for performing all work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the Work as herein specified; and for completing the Work according to the Contract Documents. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

No compensation will be made in any case of loss of anticipated profits. This includes the event of the termination of the Contract, and therefore no compensation will be made to the Contractor for the loss of anticipated profits associated with the terminated work. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.

Full compensation for conforming to all of the provisions of the Contract Documents shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefore.

- B. Payment for Patents and Patent Infringement - All fees or claims for any patented invention, article, or arrangement that may be used upon, or in, any manner connected with the performance of the Work or any part thereof shall be included in the price bid for doing the work, and the Contractor and its sureties shall defend, protect, and hold the City, the Construction Manager, and Design Consultants, together with all their officers, agents, and employees harmless against liability of any nature or kind for any and all costs, legal expenses, and damages made for such fees or claims and against any and all suits and claims brought or made by the holder of any invention or patent, or on account of any patented or unpatented invention, process, article, or appliance manufactured for or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Contract. Before final payment is made on the Contract, the Contractor shall furnish an affidavit to the City regarding patent rights

for the project. The affidavit shall state that all fees and payments due as a result of the work incorporated into the project or methods utilized during construction have been paid in full. The Contractor shall certify in the affidavit that no other fees or claims exist for work in this project.

- C. Payment of Taxes - The Contractor shall pay and shall assume exclusive liability for all taxes levied or assessed on or in connection with its performance of this Contract, whether before or after acceptance of the Work, including, but not limited to, State and local sales and use taxes, Federal and State payroll taxes or assessments, and excise taxes, including any taxes or assessments levied or increased during the performance period of the Work. No separate allowance will be made therefore, and all costs in connection therewith shall be included in the total amount of the Contract price.

## 8.02 PARTIAL PAYMENTS

- A. General - In consideration of the faithful performance of the Work prosecuted in accordance with the provisions of these Specifications and the Contract, the City will pay the Contractor for all such work installed on the basis of unit prices and/or percentage completion of lump sum Bid Items. Amounts earned for lump sum work will be based on accepted Cost Breakdown (Section 01025, **MEASUREMENT AND PAYMENT**).

Payments will be made by the City to the Contractor on estimates duly certified and approved by the Construction Manager, based on the Lump Sum or unit price value of equipment installed and tested, labor and materials incorporated into said permanent work by the Contractor during the preceding month. Payments will not be made for temporary construction unless specifically provided for in the Contract Documents.

Partial payments will be made monthly based on work accomplished as of a day mutually agreed to by the City and the Contractor. Additionally, the Contractor shall submit a detailed statement of the Contractor's request for payment of acceptable materials and equipment on hand in compliance with Section 00700-8.02B, **Partial Payments: Inclusion of Materials on Hand**. Each payment request shall list each Change Order executed prior to date of submission, including the Change Order Number.

Upon receipt of Contractor's requests for payment, the City shall act in accordance with the following:

1. The Construction Manager shall review the submitted estimates, as soon as practicable after receipt for the purpose of determining that the estimates are a proper request for payment, and shall prepare a certified estimate of the total amount of work done.

2. Any request for payment determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days after receipt. A request for payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the request for payment is not proper.
3. The number of days available to the City to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the City exceeds the seven (7) day return requirement set forth in Section 00700-8.02 A2 above.

If requested, the Contractor shall provide such additional data as may be reasonably required to support the partial payment request. The Construction Manager will be available to meet to discuss the partial payment request prior to its resubmittal(s). When the Contractor's estimate of amount earned conforms to the Construction Manager's evaluation, the Contractor shall submit to the Construction Manager a properly completed and signed progress payment request. The Construction Manager will submit the recommended progress payment request for the City's approval and processing. Payment will be made by the City to the Contractor in accordance with the City's normal accounts payable procedures; the City shall retain amounts in accordance with Section 00700-8.03, **RIGHT TO WITHHOLD AMOUNTS.**

No such estimate or payment shall be required to be made, when in the judgment of the Construction Manager, the Work is not proceeding in accordance with the provisions of the Contract, or when in the Construction Manager's judgment the total value of the Work done since the last estimate amounts to less than one thousand dollars (\$1,000).

Subject to the provisions of this section, the City shall pay the Contractor within thirty (30) days after receipt of undisputed and properly submitted requests for payment from the Contractor. In accordance with Public Contract Code Section 20104.50, if the City fails to pay an undisputed request for payment within the allotted thirty (30) days, the City shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

- B. Partial Payments: Inclusion of Materials on Hand - Materials, as used herein, shall be considered to be those items which are fabricated and manufactured material and equipment. Only those materials for which the Contractor can transfer clear title to the Owner will be qualified for partial payment. The Contractor may request payment of seventy-five (75) percent of the actual net cost of these materials. The request for partial payment will be subject to retention as provided elsewhere in the Contract Documents.

To receive partial payment for materials and equipment not incorporated in the Work, it shall be necessary for the Contractor to submit to the Construction Manager a list of such materials, at least seven (7) days prior to submitting the monthly estimate of amount earned for work completed. At the Construction Manager's sole discretion, it will approve items for which partial payment is to be made subject to the following:

1. Equipment and materials will only be eligible if given conditional or final acceptance by the Design Consultant and are in apparent compliance with Favorably Reviewed Shop Drawings.
  2. Only materials which have received Favorable Review of shop drawings will qualify.
  3. Eligible equipment or materials must be delivered and properly stored, protected, and maintained in a manner Favorably Reviewed by the Construction Manager, at the job site.
  4. The Contractor's actual net cost for the materials must be supported by paid invoices of suppliers, or other documentation requested by the Construction Manager.
  5. Materials or equipment delivered to the Site less than thirty (30) days prior to their scheduled incorporation in the Work shall not qualify.
  6. Final payment shall be made only for materials actually incorporated in the Work and, upon acceptance of the Work, all materials remaining for which advance payments had been made shall revert to the Contractor, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the Work.
  7. Partial payments for materials and equipment on hand shall not be deemed to be final payment for the material nor relieve the Contractor of its obligations under the Contract.
- C. Effect of Payment – Payment will be made by Owner based on the Construction Manager's observations at the Site and the data comprising the progress payment request. Payment will not be a representation that the City has:
1. Made exhaustive or continuous on-site inspections to check the quality or quantity of Work;
  2. Reviewed construction means, methods, techniques, sequences or procedures;
  3. Reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment;
  4. Made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum; or
  5. Accepted all or part of the Work.



D. Payment shall conform to City of Sausalito Purchasing Policy.

#### 8.03 RIGHT TO WITHHOLD AMOUNTS

- A. Retention - The City will withhold from each of the partial payments and retain as part security, ten (10) percent of the amount earned until the final payment.
- B. Other Withholds - In addition to the amount which the City may otherwise retain under the Contract, the City may withhold a sufficient amount or amounts of any payment or payments otherwise due the Contractor, as in its judgment may be necessary to cover:
1. For defective work not remedied.
  2. A reasonable doubt that the Contract can be completed for the balance then unpaid.
  3. Damage to another contractor or third party, or to property.
  4. Failure of the Contractor to maintain Record Documents current as required in Section 01720, **PROJECT RECORD DOCUMENTS**.
  5. Cost of insurance arranged by the City due to cancellation or reduction of the Contractor's insurance.
  6. Failure to submit, revise, resubmit or otherwise conform to the requirements herein for preparing and maintaining a construction schedule as required in Section 01310, **PROGRESS SCHEDULES**.
  7. Failure to make proper submissions, as specified herein.
  8. Payments due the City from the Contractor.
  9. The Contractor's neglect or unsatisfactory prosecution of the Work including additional engineering and administrative costs related to construction and/or shop drawing errors and the failure to clean up.
  10. Provisions of law that enable or require the City to withhold such payments in whole or in part.
  11. Stop Notice claims filed by Contractor's subcontractors, of any tier, or its material suppliers.

When the above reasons for withhold amounts are removed, payment will be made to the Contractor for amount withheld because of them.

#### 8.04 SECURITY SUBSTITUTION FOR WITHHOLDS

For any retention of amount earned by the Contractor under Sections 00700-8.02, **PARTIAL PAYMENTS**, or 00700-8.07, **FINAL INSPECTION AND PAYMENT**, the Contractor may substitute securities as provided in Section 22300 of the Public Contract Code, as amended, which state in part as follows:

"Provisions shall be included in any invitation for bid and in any Contract Documents to permit the substitution of securities for any moneys withheld by a public agency to ensure

performance under a Contract; however, substitution of securities provisions shall not be required where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in the State of California as the escrow agent, who shall then pay those monies to the contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the contractor."

"Alternatively, the contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the Contract, the contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the City, pursuant to the terms of this section."

"The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon."

The escrow agreement used hereunder shall be substantially similar to the form in Section 00630, **ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**.

#### 8.05 WARRANTY OF TITLE

No material, supplies, or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all Work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by the Contractor, to the City free from any claim, liens, security interest, or charges. The Contractor further agrees that neither the Contractor nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Contract shall have any right to a lien upon the premises or any improvement or appurtenances thereon, provided that this shall not preclude the Contractor from installing metering devices and other equipment of utility companies or of municipalities, the title of which is commonly retained by the utility company or the municipality. In the event of the installation of any such metering device or equipment, the Contractor shall advise the Owner as to the legal City thereof.

Nothing contained in this paragraph, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the City. The provisions of this Paragraph shall be inserted in all subcontracts and material contracts, and notice of its provisions shall be given to all

persons furnishing materials for the Work when no formal Contract is entered into for such materials.

#### 8.06 SUBSTANTIAL COMPLETION

When the Contractor considers that the Work is Substantially Complete, the Contractor shall notify the Construction Manager in writing. Upon receipt of the notification, the Construction Manager, the City and/or their authorized representatives will make inspection, to determine if the Work and administrative requirements are sufficiently complete in accordance with the Contract Documents so the City can occupy or utilize the Work for its intended use. If items are found which prevent such use or occupancy, the Construction Manager shall notify the Contractor in writing of such items by issuing a Corrective Work Item List.

Upon the completion of such corrective work, the Contractor shall so notify the Construction Manager in writing. The Construction Manager shall inspect the Work to determine its acceptability for Substantial Completion and for determination of the status of any other items which are required to meet the terms of Substantial Completion as listed in the Contract Documents. Upon verification that the project is Substantially Complete, the Construction Manager shall prepare a Certificate of Substantial Completion and the Punch List. The Certificate shall establish the date of Substantial Completion and the responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, commencement of warranties required by the Contract Documents, and shall fix the time, not to exceed sixty (60) days, within which the Contractor shall finish all items on the Punch List or remaining work or administrative requirements accompanying the Certificate. When the preceding provisions have been approved by both the City and the Contractor, they shall sign the Certificate to acknowledge their written acceptance of the responsibilities assigned to them in such Certificate. By such acknowledgment, the Contractor agrees to pay the City's actual costs including, but not limited to, charges for engineering, inspection and administration incurred due to the failure to complete the Punch List within the time period provided in the Certificate of Substantial Completion.

#### 8.07 FINAL INSPECTION AND PAYMENT

Upon completion of the Work, including all items on the Punch List, and upon completion of final cleaning, the Contractor shall so notify the Construction Manager in writing. Upon receipt of the notification, the Construction Manager, the City and/or their authorized representatives will make the final inspection, to determine the actual status of the Work in accordance with the terms of the Contract. If materials, equipment, workmanship or administrative requirements are found which do not meet the terms of the Contract, the Construction Manager shall prepare a Final Inspection List of such items and submit it to the Contractor. Following completion of the work to correct all items in the Final Inspection List the Contractor shall notify the Construction Manager. The Construction Manager shall, in turn, notify the City that the Work has been completed in accordance with the Contract. Final determination of the acceptability of the Work shall be made by the City. After completion of the Work, but prior to its

Acceptance by the City, the last partial payment will be made to the Contractor in accordance with Section 00700-8.02, **PARTIAL PAYMENTS**.

After receipt of the last partial payment, but prior to Acceptance of the Work by the City, the Contractor shall send a letter to the Construction Manager. The letter, pursuant to California Public Contract Code Section 7100, shall state that acceptance of the final payment described below shall operate as and shall be, a release to the City, the Construction Manager, the Design Consultant, and their duly authorized agents, from all claim of and/or liability to the Contractor arising by virtue of the Contract related to those amounts. Disputed Contract claims in stated amounts previously filed as provided in Section 00700-7.03, **RESOLUTION OF DISPUTES**, may be specifically excluded by the Contractor from the operation of the release.

Following receipt of all required submittals and the Construction Manager's written statement that construction is complete and recommendation that the City accept the project, the City will take formal action on Acceptance.

Within ten (10) days of the Acceptance by the City of the completed Work embraced in the Contract, the City will cause to be recorded in the office of the County Recorder a Notice of Completion.

Thirty-five (35) days after recording the Notice of Completion of the work involved in the Contract, the City will pay the Contractor in lawful money such sums of money as may be due the Contractor including all sums retained but excluding such sums as have previously been paid the Contractor or as may be needed to cover outstanding stop notice claims or disputes. This payment will constitute the final payment to the Contractor under this Contract except for outstanding stop notice claims and disputed amounts.

In the event of a dispute between the City and the Contractor, the City may in accordance with Public Contract Code Section 7107 withhold from the final payment an amount of one hundred fifty (150) percent of the disputed amount.

**\*\*END OF SECTION\*\***

**SECTION 00800**

**SUPPLEMENTARY GENERAL CONDITIONS**

**ARTICLE 1 - MODIFICATIONS TO THE GENERAL CONDITIONS**

**1.01 TIME ALLOWED FOR COMPLETION**

In accordance with the provisions of Section 00700-6.02, **CONTRACT TIME**, Substantial Completion of this Project shall be completed within **one hundred eighty-two (182) consecutive calendar days** from the date established in the Notice to Proceed for the commencement of Contract Time.

**1.02 DAMAGES FOR DELAYS**

In accordance with the provisions of Section 00700-6.05, **LIQUIDATED DAMAGES**, for the period of time that any portion of the Work remains unfinished after the time fixed for Substantial Completion in Section 00800-1.01, **TIME ALLOWED FOR COMPLETION**, as modified by extensions of time granted by the City, it is understood and agreed by the Contractor and the City that the Contractor shall pay the City the damages listed below.

<u>Item</u>	<u>Dollars Per Day Liquidated Damages</u>
Substantial Completion	\$ 1,500

**1.03 WEATHER DAYS**

In accordance with the provisions of Section 00700-6.04 B3, **Weather Delays**, an allowance of fourteen (14) working days of weather caused delay have been included in the time allowed for completion. This allowance represents a reasonable assessment of anticipated lost working days based on historical weather patterns. These weather days shall be included in the Contractor's schedule as specified in Section 01310-1.04, **WEATHER CONDITIONS**.

**1.04 NOT USED**

**1.05 CONTRACT ADMINISTRATION**

The following project representatives are hereby designated by the City:

- A. Name of City Representative  
Todd Teachout, City Engineer  
  
415-289-4111

- B. Name of Construction Manager  
City will assign representative prior to construction.
- C. Name of Design Consultant Representative  
Patrick Fuss  
530-792-3262

1.06 NOT USED

**ARTICLE 2 - INDEMNITY AND INSURANCE**

2.01 INSURANCE

Within ten (10) days after award of the Contract, the Contractor shall promptly obtain, at its own expense, all the insurance required by Section 00800-Article 2, **INDEMNITY AND INSURANCE**, and submit coverage verification for review and approval by the City prior to the City's execution of the Contract.

The Notice to Proceed with the Work under this Contract will not be issued, and the Contractor shall not commence work, until such insurance has been approved by the City. Such insurance shall remain in full force and effect at all times during the prosecution of the Work and until the final completion and Acceptance thereof. In addition, the Commercial General Liability Insurance shall be maintained for a minimum of five (5) years after final completion and acceptance of the Work. The Notice to Proceed does not relieve the Contractor of the duty to obtain such insurance as required herein.

The Contractor shall not allow any subcontractors to commence work on its subcontract until all similar insurance required of the subcontractor, except Builder's Risk Insurance, has been obtained and verified by the Contractor and submitted to the Construction Manager for the City's review and records. Subcontractors shall furnish original certificates and endorsements as verification of insurance coverage. The insurance liability limits specified in Section 00800-Article 2, **INDEMNITY AND INSURANCE**, shall apply for all subcontractors listed in Section 00430, **DESIGNATION OF SUBCONTRACTORS**. The Contractor shall designate the insurance liability limits for all other subcontractors.

Companies writing the insurance under this article shall be licensed to do business in the State of California or be permitted to do business under the Surplus Line Law of the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

All policies of insurance required herein shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior notice by certified mail return receipt requested has been given to the City.

Contractors shall include all costs for all insurance in the Bids.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations under this Contract. For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects the City, the Design Consultant and the Construction Manager, and their officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

Any failure of the Contractor to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, the Design Consultant and the Construction Manager and their officers, officials, employees, agents or volunteers.

The Contractor shall take out, pay for, and maintain throughout the duration of this Contract and for such additional periods as more specifically required herein the following 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, the Contractor's agents, representatives, employees or subcontractors.

- A. Commercial General and Automobile Liability Insurance - This insurance shall protect the Contractor from claims for bodily injury and property damage which may arise because of the nature of the Work or from operations under this Contract.
1. Additional Insureds - The Commercial General Liability policy of insurance shall include as additional insureds the City of Sausalito, each of its officers, employees, and agents; the Design Consultant, the Construction Manager and each of their partners, officers, employees, and agents and coverage provided to such additional insureds. This policy shall provide coverage to each of the said insureds with respect to said Work. Both bodily injury and property damage insurance must be on an occurrence basis. Said policy shall be endorsed to provide primary coverage to the full limit of liability stated in the declarations, and if there is any other insurance against the loss covered by said policy, that other insurance shall be excess insurance and not contribute with said policy.
  2. Amount of Coverage - The bodily injury and property damage liability of the Commercial General Liability insurance shall provide coverage in the following limits of liability: \$1,000,000 on account of any one occurrence with an annual general aggregate limit of not less than \$2,000,000, and \$2,000,000 products and completed operations aggregate, combined single limit. The Automobile Liability insurance policy shall provide minimum limits of \$1,000,000 per accident arising out of the ownership, maintenance, or use of any owned or non-owned vehicles.

3. Subcontractors - The bodily injury and property damage liability insurance shall not be deemed to require the Contractor to have its subcontractors named as insureds in the Contractor's policy, but the policy shall protect the Contractor from contingent liability which may arise from operations of its subcontractors.
4. Included Coverage - The above Commercial General Liability insurance shall also include the following coverage:
  - a. Premises - Operations
  - b. Owner's / Independent Contractor's and Contractor's Protective
  - c. Products - Completed Operations
  - d. Personal Injury - (False Arrest, Libel, Wrongful Eviction, etc.)
  - e. Broad Form Property Damage – including to the Maximum Extent Possible, coverage for the Assumption of Liability Pursuant to Completed Operations
  - f. Separation if Insureds / Cross-Liability Provisions
  - g. Duty to Defend all Insureds
  - h. Deletion of any Limitation on Coverage for Bodily Injury or Property Damage Arising out of Subsidence or Soil or Earth Movement.  
 A provision that the annual general aggregate and the products and completed operations annual aggregate shall apply separately to each Project for which Contractor provides services away from premises owned by or rented to Contractor.
  - i. Pollution Legal Liability Endorsement
  - j. XCU - (Explosion, Collapse, Underground Damage) XCU may be deleted when not applicable to operations performed by the Contractor or its sub-contractors.
  - k. Blanket Contractual Liability including the Indemnification Agreement as herein stated.
5. Umbrella Policy - At the option of the Contractor, primary limits may be less than required, with an Umbrella Policy providing the additional limits needed. This form of insurance will be acceptable provided that the Primary and Umbrella Policies both provide the insurance coverages herein required, including all additional insured requirements. The umbrella policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying commercial General Liability insurance.

- B. Workers' Compensation Insurance - In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the Labor Code of the State of California, the Contractor is required to secure the payment of compensation to its employees and for that purpose obtain and keep in effect adequate Workers' Compensation Insurance.



The Contractor is advised 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 shall comply with such provisions and have Employers' Liability limits of \$1,000,000 per accident before commencing the performance of the Work of this Contract.

Before the Notice to Proceed with the Work under this Contract is issued, the Contractor shall submit written evidence that the Contractor has obtained for the period of the Contract full Workers' Compensation Insurance coverage for all persons whom it employs or may employ in carrying out the Work under this Contract. This insurance shall be in accordance with the requirements of the most current and applicable State Workers' Compensation Insurance Laws.

- C. Builder's Risk Insurance - "All Risk or Special Form" Builder's Risk Insurance on the replacement cost basis, in an amount equal to the full replacement cost on a completed value basis. Such insurance shall be obtained, paid for, and maintained by the Contractor and shall cover, but shall not be limited to, fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, flood and earthquake. This insurance shall name the City, the Design Consultant, the Construction Manager and the Contractor as insureds, as their interests may appear and shall include coverage, but not by way of limitation, for all damages of loss to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Project site, to construction plant and temporary structures.

Pursuant to Section 7105 of the Public Contract Code, the City requires \$2,000,000 for any damage to the Work caused by an Act of God, as defined by Section 7105(b)(2) of that Code. The insurance premium for such coverage is listed as a separate Bid Item.

Builder's Risk Insurance policies shall contain the following provisions:

- (1) The Owner shall be named as loss payee.
- (2) The Insurer shall waive all rights of subrogation against the City.

Builder's Risk Insurance may have a deductible clause not to exceed the following limits:

- (1) The deductible for coverage for any damage to the Work caused by an Act of God, as defined by Section 7105(b) of the Public Contract Code shall not exceed five percent of the value at risk at the time of the loss. The City shall be named as an insured.
- (2) All Other Perils: \$5,000

The Contractor shall be responsible for paying any and all deductible costs. The policy shall provide the City the right to occupy the premises without termination of the policy until acceptance of the Project.

- D. Proof of Coverage - Before the Notice to Proceed with the Work under this Contract is issued, the Contractor shall furnish the City with certificate(s) evidencing issuance of all insurance mentioned herein, copies of the policy declaration or information page(s) and endorsements. The certificate(s) and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on Forms A-1 and B-1 as included in Section 00650, **GENERAL LIABILITY ENDORSEMENT**, and Section 00651, **AUTO LIABILITY ENDORSEMENT**, or equivalent endorsement forms acceptable to the City. The certificate(s), policy declaration or information page(s), and endorsements are to be received and approved by the City before work commences. Endorsements are not required for Workers' Compensation or Builder's Risk Insurances. Such certificates of insurance shall provide that the insurance policy shall not be cancelable, be subject to non-renewal, or otherwise be subject to material modification, except with thirty (30) days prior written notice to the City and Contractor shall also provide certificate(s) evidencing renewals of all insurance required herein, at least ten (10) days prior to the expiration date of any such insurance.

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, the Design Consultant and the Construction Manager and their officers, officials, employees and agents; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

In the event of the breach of any provision of this paragraph, or in the event of any notices received which indicates any required insurance coverage will be diminished or canceled, the City, at its option, may, notwithstanding any other provisions of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

- E. Indemnification - To the fullest extent permitted by Law, the Contractor and each subcontractor as to its portion of the Work shall indemnify, defend and hold harmless the City, the Design Consultant and the Construction Manager and their agents, consultants and employees from and against all liability, claims, damages, losses and expenses, including but not limited to attorneys' fees and other litigation costs, arising out of or in any way connected to the performance of the Work, provided that any such liability, claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death (including that sustained by Contractor's or Subcontractor's employees), or to injury to or destruction of tangible property (other than the Work itself) including but not limited to the loss of use resulting therefrom. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist.

Contractor's and subcontractor's duty to indemnify and save harmless shall include the duty to defend as set forth in California Civil Code Section 2778; provided, that nothing herein contained shall be construed to require Contractor or subcontractor to indemnify indemnities against any responsibility or liability in contravention of California Civil Code Section 2782.

## 2.02 INSURANCE DURING GUARANTEE PERIOD

Contractor shall maintain the above described worker's compensation, public liability and property damage insurance and comprehensive general liability insurance in force during the entire performance of all work the Contractor or its subcontractors during the guarantee period.

## 2.03 INJURY OR ILLNESS REPORTS

The Contractor shall furnish the Construction Manager with a copy of the Employer's Report of Injury as required by CAL/OSHA immediately following any incident requiring the filing of said report during the prosecution of the Work under this Contract. The Contractor shall also furnish the Construction Manager with a copy of the Employer's Report of injury involving any subcontractor on this Project.

## 2.04 NOTIFICATION OF INSURANCE COMPANIES

The Contractor shall advise all insurance companies to familiarize themselves with all of the conditions and provisions of this Contract, and they shall waive the right of special notification of any change or modification of this Contract or of extension of time, or of decreased or increased work, or of the cancellation of the Contract, or of any other act or acts by the City or its authorized employees and agents, under the terms of this Contract, and failure to so notify the aforesaid insurance companies of changes shall in no way relieve the insurance companies of their obligation under this Contract.

## ARTICLE 3 - NOT USED

## ARTICLE 4 - PARTNERING

The successful Bidder will have the opportunity to enter into a partnering agreement with the City. Partnering consists of a voluntary effort by all parties having a major role in the Project to develop joint goals and establish a cooperative rather than an adversarial atmosphere while executing the construction project. The objective of partnering is the effective completion of the work on schedule, within budget and in accordance with the Contract Documents.

Although partnering is strongly encouraged, it is not a requirement of the Contract. The establishment of a partnering agreement will not change the legal relationship of the parties to the Contract nor relieve either party of any of the terms of the Contract.

To initiate the partnering process, the City and Contractor will meet after the Notice of Award to confirm if both parties agree that partnering will be utilized on the Project.

If agreement is reached that partnering will be utilized, the parties will conduct a Partnering workshop prior to the preconstruction conference. Follow-up workshop(s) may also be held throughout the Project. All workshops may be conducted by an outside facilitator. It is expected that, at the conclusion of the initial workshop, the parties will express a consensus regarding, among other things, the respective goals in completing the Contract.

A successful partnership will require the participation of the following project personnel:

Contractor:	Company Executive, Project Manager, Superintendent, Foreman, Key suppliers Subcontractor's supervisory personnel
City:	City Manager, Project Manager, Inspector, Key staff
Design Consultant:	Principal-in-Charge, Project Manager, Project Engineer
Construction Manager:	Principal-in-Charge, Project Manager, Inspectors(s)

The City will make all the necessary arrangements for the workshop(s). The Contractor's costs associated with effectuating this partnering agreement will include attendance of appropriate personnel at the workshops. The City will pay for the actual site and facilitator costs for the Partnering workshop.

#### **ARTICLE 5 - RECORD DRAWINGS AND ADDITIONAL INFORMATION**

The following record information is available for review by the Contractor at the City's offices. The City makes no warranty as to the accuracy of this information.

Record drawings for each project site are available for review upon request.

#### **ARTICLE 6 - SUBSTANTIAL COMPLETION**

Substantial completion of the Project as required by Section 00700-8.06, **SUBSTANTIAL COMPLETION**, requires that the following portions of the Work must be completed in accordance with the requirements of the Contract Documents:

- Completion of the Work as required by the Contract Documents to allow the City to occupy and utilize the Project for its intended purpose.
- Completion of the Corrective Work Item List as described in Section 00700-8.06, **SUBSTANTIAL COMPLETION**
- All testing required by the Contract and the City's General Provisions and Specifications has been successfully completed.
- All process equipment shall be installed and operational.
- All items related to health and safety of Owner operations and maintenance staff, including warning signs, guardrails, and safety equipment shall be complete.

- All record drawings have been submitted, updated, reviewed and approved.

Portions of the Work not essential to the system operation, which can be completed without interruption of system operations, may be completed after the Work is substantially complete, and may include the following items:

- Final Site Clean-Up
- Restriping of roadways
- Completion of the Punch List prepared by the Construction Manager in accordance with Section 00700-8.06, **SUBSTANTIAL COMPLETION**.

**\*\*END OF SECTION\*\***

*(THIS PAGE LEFT BLANK INTENTIONALLY)*