



**PROJECT
PLANS AND SPECIFICATIONS
FOR**

Project #24-813-9921

**2025 ANNUAL CURB, GUTTER, AND SIDEWALK
MAINTENANCE**

**Bid Opening
Tuesday, March 25, 2025, 2:00 pm**

ISSUE DATE: February 28, 2025

Issued February 28, 2025

2025 ANNUAL CURB, GUTTER, AND SIDEWALK MAINTENANCE
#24-813-9921

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A - Locations of Work

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C - Sample Contract

D - Blueprint for a Clean Bay

E - Stormwater Ordinance

1. NOTICE INVITING BIDS

1.1. Bid Submission

The Town of Los Gatos ("Town") will accept electronic bids for its 2025 Annual Curb, Gutter, and Sidewalk Maintenance Project #24-813-9921 ("Project"), by or before **Tuesday, March 25, 2025, at 2:00 pm**, via the Town's bidding site at <https://procurement.opengov.com/portal/losgatosca>, at which time the bids will be opened electronically, as further specified in the Instructions to Bidders.

1.2. Project Information

- A. **Location and Description** - The Project involves the repair or replacement of concrete curb, gutter, sidewalks, and driveway approaches, installation of new curb ramps, signposts, root pruning, and associated work within the Town, as shown in **Attachment A**, "Locations of Work," incorporated herein.
- B. **Time for Final Completion** - The Project must be fully completed within 43 calendar days from the start date set forth in the Notice to Proceed.
 - 1. **Liquidated Damages** - \$1,000 per day for each day of unexcused delay in achieving Final Completion
- C. **Estimated Cost.** The estimated construction cost is \$200,000.

1.3. License and Registration Requirements

- A. **License** - This Project requires a valid California contractor's license for the following classification(s): A. If the Contractor subcontracts the concrete work, then the Subcontractor shall possess a valid California Clas C-8 California contractor's license.
- B. **DIR Registration** - Town may not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder is registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

1.4. Contract Documents

The plans, specifications, bid forms and contract documents for the Project, and any addenda thereto ("Contract Documents") may be downloaded from Town's website located at: <https://procurement.opengov.com/portal/losgatosca>. Printed copy of the Contract Documents is not available from the Town.

1.5. Bid Security

The Bid Proposal must be accompanied by bid security of ten percent of the maximum bid amount, in the form of a cashier's or certified check made payable to Town, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security must guarantee that within ten days after Town issues the Notice of

Potential Award, the successful bidder will execute the Contract and submit the payment and performance bonds, insurance certificates and endorsements, valid Certificates of Reported Compliance as required under the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("Off-Road Regulation"), if applicable, and any other submittals required by the Contract Documents and as specified in the Notice of Potential Award.

1.6. Prevailing Wage Requirements

- A. **General** - Pursuant to California Labor Code § 1720 et seq., this Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.
- B. **Rates** - The prevailing rates are on file with the Town and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.
- C. **Compliance** - The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.

1.7. Retention

The percentage of retention that will be withheld from progress payments is 5 %.

1.8. Performance and Payment Bonds

The successful bidder will be required to provide performance and payment bonds, each for 100% of the Contract Price, as further specified in the Contract Documents.

1.9. Substitution of Securities

Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code § 22300

1.10. Subcontractor List

Each Subcontractor must be registered with the DIR to perform work on public projects. Each bidder must submit a completed Subcontractor List form with its Bid Proposal, including the name, location of the place of business, California contractor license number, DIR registration number, and percentage of the Work to be performed (based on the base bid price) for each Subcontractor that will perform Work or service or fabricate or install Work for the prime contractor in excess of one-half of 1% of the bid price, using the Subcontractor List form included with the Contract Documents.

1.11. [Instructions to Bidders](#)

All bidders should carefully review the Instructions to Bidders for more detailed information before submitting a Bid Proposal. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, as defined therein, including this Notice Inviting Bids.

By: **/s/ Wendy Wood, Town Clerk**

Publication Date: Friday, February 28, 2025

2. Instructions to Bidders

Each Bid Proposal submitted to Town of Los Gatos ("Town") for its 2025 Annual Curb, Gutter, and Sidewalk Maintenance Project #24-813-9921 ("Project") must be submitted in accordance with the following instructions and requirements:

2.1. Bid Submission

- A. **General** - Each bidder must register for an account on the Town's Procurement site, <https://procurement.opengov.com/portal/losgatosca> to submit the Bid Proposal electronically. Plans, Specifications, and Addendums (if any) may be viewed and downloaded free of charge via the internet at <https://procurement.opengov.com/portal/losgatosca>. To be included on the Plan Holder's List for the Project, registered users must download the Plans and Specifications from the bidding website. Each Bid Proposal must be completed, using the form provided in the Contract Documents, signed, and submitted electronically, with all required forms and attachments, by or before the date and time set forth in Section 1 of the Notice Inviting Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted. Late submissions will not be considered. Town reserves the right to postpone the date or time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from Town. The bid price(s) must include all costs to perform the Work as specified, including all labor, material, supplies, and equipment and all other direct or indirect costs such as applicable taxes, insurance and overhead.
- B. **Bid Opening** - Bids timely submitted via the Town's bidding portal will be opened and publicly read aloud during a Zoom meeting after bids have closed on the day and time listed above. Here is the Zoom link to participate: <https://www.zoom.com>. Webinar ID: 852 3124 1665. Passcode: 2025curb.
- C. **DIR Registration** - Subject to limited legal exceptions for joint venture bids and federally-funded projects, Town may not accept a Bid Proposal from a bidder without proof that the bidder is registered with the DIR to perform public work under Labor Code § 1725.5. If Town is unable to confirm that the bidder is currently registered with the DIR, Town may disqualify the bidder and disregard its bid. (Labor Code §§ 1725.5 and 1771.1(a).)

2.2. Bid Proposal

A Bid Proposal submitted with exceptions or terms such as "negotiable," "will negotiate," or similar, will be considered nonresponsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section titled "Bid Security" below, and by a completed Subcontractor List and Non-Collusion Declaration using the forms included with the Contract Documents, and any other required enclosures, as applicable.

2.3. Authorization and Execution

Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporations Code § 313.

2.4. Bid Security

Each Bid Proposal must be accompanied by bid security of ten percent of the maximum bid amount, in the form of a cashier's check or certified check, made payable to the Town, or bid bond using the form included in the Contract Documents and executed by a surety licensed to do business in the State of California. The bid security must guarantee that, within ten days after issuance of the Notice of Potential Award, the bidder will: execute and submit the enclosed Contract for the bid price; submit payment and performance bonds for 100% of the maximum Contract Price; submit the insurance certificates and endorsements; and submit valid Certificates of Reported Compliance as required by the Off-Road Regulation, if applicable, and any other submittals, if any, required by the Contract Documents or the Notice of Potential Award. A Bid Proposal may not be withdrawn for a period of 60 days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code § 5100 et seq.

2.5. Requests for Information

Questions or requests for clarifications regarding the Project, the bid procedures, or any of the Contract Documents must be submitted through the Town's Procurement Site <https://procurement.opengov.com/portal/losgatosca> and received a minimum of five (5) working days prior to the scheduled bid opening. Oral responses are not authorized and are not binding on the Town. Bidders should submit any such written inquiries at least five Working Days before the scheduled bid opening. Questions received any later might not be addressed before the bid deadline. An interpretation or clarification by Town in response to Questions or requests for clarifications will be issued through an addendum no later than 72 hours prior to bid opening.

2.6. Pre-Bid Investigation

- A. **General** - Each bidder is solely responsible at its sole expense for diligent and thorough review of the Contract Documents, examination of the Project site, and reasonable and prudent inquiry concerning known and potential site and area conditions prior to submitting a Bid Proposal. Each bidder is responsible for knowledge of conditions and requirements which reasonable review and investigation would have disclosed. However, except for any areas that are open to the public at large, bidders may not enter property owned or leased by the Town or the Project site without prior written authorization from Town.
- B. **Document Review** - Each bidder is responsible for review of the Contract Documents and any informational documents provided "For Reference Only," e.g., as-builts, technical reports, test data, and the like. A bidder is responsible for notifying Town of any errors, omissions, inconsistencies, or conflicts it discovers in the Contract Documents, acting solely in its capacity

as a contractor and subject to the limitations of Public Contract Code § 1104. Notification of any such errors, omissions, inconsistencies, or conflicts must be submitted in writing to the Town no later than five Working Days before the scheduled bid opening. (See Section 5, above.) Town expressly disclaims responsibility for assumptions a bidder might draw from the presence or absence of information provided by Town.

- C. **Project Site** - Questions regarding the availability of soil test data, water table elevations, and the like should be submitted to the Town through the bidding site, as specified in Section 5, above. Any subsurface exploration at the Project site must be done at the bidder's expense, but only with prior written authorization from Town. All soil data and analyses available for inspection or provided in the Contract Documents apply only to the test hole locations. Any water table elevation indicated by a soil test report existed on the date the test hole was drilled. The bidder is responsible for determining and allowing for any differing soil or water table conditions during construction. Because groundwater levels may fluctuate, difference(s) in elevation between ground water shown in soil boring logs and ground water actually encountered during construction will not be considered changed Project site conditions. Actual locations and depths must be determined by bidder's field investigation. The bidder may request access to underlying or background information on the Project site in Town's possession that is necessary for the bidder to form its own conclusions, including, if available, record drawings or other documents indicating the location of subsurface lines, utilities, or other structures.
- D. **Utility Company Standards** - The Project must be completed in a manner that satisfies the standards and requirements of any affected utility companies or agencies (collectively, "utility owners"). The successful bidder may be required by the third party utility owners to provide detailed plans prepared by a California registered civil engineer showing the necessary temporary support of the utilities during coordinated construction work. Bidders are directed to contact the affected third party utility owners about their requirements before submitting a Bid Proposal.

2.7. Bidders Interested in More Than One Bid

No person, firm, or corporation may submit or be a party to more than one Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.

2.8. Addenda

Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code § 4104.5, Town reserves the right to issue addenda prior to bid time. Each bidder is solely responsible for ensuring it has received and reviewed all addenda prior to submitting its bid. Bidders should check Town's website periodically for any addenda or updates on the Project at <https://procurement.opengov.com/portal/losgatosca>.

2.9. Brand Designations and “Or Equal” Substitutions

Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an equal item must be submitted with the written request for substitution. A request for substitution must be submitted within 35 days after Notice of Potential Award unless otherwise provided in the Contract Documents. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code § 3400(c).

2.10. Bid Protest

Any bid protest against another bidder must be submitted in writing and received by Town sent via email to Saurabh Nijhawan, Senior Civil Engineer, at snijhawan@losgatosca.gov before 5:00 p.m. no later than two Working Days following bid opening (“Bid Protest Deadline”) and must comply with the following requirements:

- A. **General** - Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. For purposes of this Section 10, a “Working Day” means a day that Town is open for normal business, and excludes weekends and holidays observed by Town. Pursuant to Public Contract Code § 4104, inadvertent omission of a Subcontractor’s DIR registration number on the Subcontractor List form is not grounds for a bid protest, provided it is corrected within 24 hours of the bid opening or as otherwise provided under Labor Code § 1771.1(b).
- B. **Protest Contents** - The bid protest must contain a complete statement of the basis for the protest and must include all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting bidder and any person submitting the protest on behalf of or as an authorized representative of the protesting bidder.
- C. **Copy to Protested Bidder** - Upon submission of its bid protest to Town, the protesting bidder must also concurrently transmit the protest and all supporting documents to the protested bidder, and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Bid Protest Deadline.
- D. **Response to Protest** - The protested bidder may submit a written response to the protest, provided the response is received by Town before 5:00 p.m., within two Working Days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must attach all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the

name, address, email address, and telephone number of the person responding on behalf of or representing the protested bidder if different from the protested bidder.

- E. **Copy to Protesting Bidder** - Upon submission of its response to the bid protest to the Town, the protested bidder must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting bidder and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- F. **Exclusive Remedy** - The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy in the event of a bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.
- G. **Right to Award** - Town reserves the right, acting in its sole discretion, to reject any bid protest that it determines lacks merit, to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a Notice to Proceed with the Work notwithstanding any pending or continuing challenge to its determination.

2.11. Reservation of Rights

Town reserves the unfettered right, acting in its sole discretion, to waive or to decline to waive any immaterial bid irregularities; to accept or reject any or all bids; to cancel or reschedule the bid; to postpone or abandon the Project entirely; or to perform all or part of the Work with its own forces. The Contract will be awarded, if at all, within 60 days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid. Any planned start date for the Project represents the Town's expectations at the time the Notice Inviting Bids was first issued. Town is not bound to issue a Notice to Proceed by or before such planned start date, and it reserves the right to issue the Notice to Proceed when the Town determines, in its sole discretion, the appropriate time for commencing the Work. The Town expressly disclaims responsibility for any assumptions a bidder might draw from the presence or absence of information provided by the Town in any form. Each bidder is solely responsible for its costs to prepare and submit a bid, including site investigation costs.

2.12. Bonds

Within ten calendar days following Town's issuance of the Notice of Potential Award to the successful bidder, the bidder must submit payment and performance bonds to Town as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract Price as awarded, including additive alternates, if applicable.

2.13. License(s)

The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. The successful bidder must also obtain a Town business license within ten (10) days following Town's issuance of the Notice of Potential Award. Subcontractors must also obtain a Town business license before performing any Work.

2.14. Ineligible Subcontractor

Any Subcontractor who is ineligible to perform work on a public works project under Labor Code §§ 1777.1 or 1777.7 is prohibited from performing work on the Project.

2.15. Safety Orders

If the Project includes construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, each bid must include a bid item for adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which comply with safety orders as required by Labor Code § 6707.

2.16. In-Use Off-Road Diesel-Fueled Fleets

If the Project involves the use of vehicles subject to the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("Off-Road Regulation"), then within ten calendar days following Town's issuance of the Notice of Potential Award to the successful bidder, the bidder must submit to Town valid Certificates of Reported Compliance for its fleet and its listed Subcontractors, if applicable, in accordance with the Off-Road Regulation, unless exempt under the Off-Road Regulation.

2.17. Additive and Deductive Alternates

As required by Public Contract Code § 20103.8, if this bid solicitation includes additive or deductive items, the following method will be used to determine the lowest bid: The lowest bid will be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

2.18. Bid Schedule

Each bidder must complete the Bid Schedule form with unit prices as indicated, and submit the completed Bid Schedule with its Bid Proposal.

- A. **Estimated Quantities** - Unless identified as a "Final Pay Quantity," the quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased, and no increase in the unit price, and without regard to the percentage increase or decrease of the estimated quantity and the actual quantity.

2.19. For Reference Only

The following documents are provided "For Reference Only," as defined in Section 3.4 of the General Conditions:

- A. Locations of Work (**Attachment A**)
- B. Standard Plans (**Attachment B**)
- C. Sample Contract (**Attachment C**)

D. Blueprint for a Clean Bay (**Attachment D**)

E. Town of Los Gatos Storm Water Pollution Control Ordinance (**Attachment E**)

3. Bid Schedule

This Bid Schedule must be completed and included with the Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked “(SW)” are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the “Extended Total Amount” column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal form.

AL = Allowance CF = Cubic Feet CY = Cubic Yard EA = Each LB = Pounds
LF = Linear Foot LS = Lump Sum SF = Square Feet TON = Ton (2000 lbs)

BASE BID

Item	Description	Unit	Quantity	Unit Cost	Total
1	Traffic Control	L.S.	1		
2	Adjust Utility to Grade (Revocable)	Ea.	1		
3	Clearing and Grubbing	L.S.	1		
4	Remove and Replace Curb and Gutter	L.F.	170		
5	Remove and Replace Rolled Curb	L.F.	410		
6	Remove and Replace Sidewalk	S.F.	1,240		
7	Remove and Replace Hardscape (Revocable)	S.F.	100		
8	Remove and Replace Commercial Concrete Driveway	S.F.	90		
9	Install New Curb Ramp-Case B	Ea.	9		
10	Install New Curb Ramp-Case C	Ea.	1		
11	Install New Curb Ramp-Case F	Ea.	4		
12	Adjust Frame and Grate to Grade	Ea.	2		
13	Paint Red Curb (Revocable)	L.F.	10		
14	Remove and Install New Sign and Post (Revocable)	Ea.	1		

Invitation For Bid #24-813-9921

Title: 2025 Annual Curb, Gutter, and Sidewalk Maintenance

Item	Description	Unit	Quantity	Unit Cost	Total
TOTAL					

4. Vendor Questionnaire

4.1. Will you be using subcontractor/s?*

- ☐ Yes
☐ No

*Response required

When equals "Yes"

4.1.1. *Subcontractor's list**

Please download the below documents, complete, and upload.

- [Subsontractors list.pdf](#)

*Response required

4.2. Please provide Bid Bond*

Please download the below documents, complete, and upload.

- [bid_bond.pdf](#)

*Response required

4.3. Noncollusion Declaration*

Please download the below documents, complete, and upload.

- [Noncollusion declaration fo...](#)

*Response required

4.4. Bidder's Certifications and Warranties. *

By confirming and submitting this Bid Proposal, Bidder certifies and warrants the following:

- Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder's knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code § 1104.
- Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this bid. Bidder waives any claims it might have against the Town based on its failure to receive, access, or review any addenda for any reason.
- Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.
- Bidder Responsibility.** Bidder is a responsible bidder, with the necessary ability, capacity, experience, skill, qualifications, workforce, equipment, and resources to perform or cause the

Work to be performed in accordance with the Contract Documents and within the Contract Time.

- E. **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed bid. All statements and information provided in this Bid Proposal and enclosures are true and correct to the best of Bidder's knowledge.
- F. **Nondiscrimination.** In preparing this bid, the Bidder has not engaged in discrimination against any prospective or present employee or Subcontractor on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status.
- G. **Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Bidder is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

☐ Please confirm

*Response required

4.5. Award of Contract*

Award of Contract. By confirming and submitting this Bid Proposal, Bidder agrees that, if Town issues the Notice of Potential Award to Bidder, then within ten days following issuance of the Notice of Potential Award to Bidder, Bidder will do all of the following:

- A. **Execute Contract.** Enter into the Contract with Town in accordance with the terms of this Bid Proposal, by signing and submitting to Town the Contract prepared by Town using the form included with the Contract Documents;
- B. **Submit Required Bonds.** Submit to Town a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents;
- C. **Insurance Requirements.** Submit to Town the insurance certificate(s) and endorsement(s) as required by the Contract Documents; and
- D. **Certificates of Reported Compliance.** Submit to Town valid Certificates of Reported Compliance for its fleet and its listed Subcontractors, if applicable, if the Project involves the use of vehicles subject to the Off-Road Regulation. (See Section 16 of the Instructions to Bidders.)

☐ Please confirm

*Response required

5. General Conditions

Article 1 - Definitions

Definitions - The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day,” or “working day.”

Allowance means a specific amount that must be included in the Bid Proposal for a specified purpose.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by Town, which changes the scope of Work, the Contract Price, or the Contract Time.

Claim means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to Town in accordance with the requirements of the Contract Documents, and which has been rejected by Town, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between Town and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal and attachments thereto; the Contract; the Notice of Potential Award and Notice to Proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Plans and Specifications; any Change Orders; and any other documents which are clearly and unambiguously made part of the Contract Documents. The Contract Documents do not include documents provided “For Reference Only,” or documents that are intended solely to provide information regarding existing conditions.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, supplies, or equipment following submission of the Bid Proposal.

Contract Time means the time specified for complete performance of the Work, as set forth in the Contract and as may be amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture that has signed the Contract with Town to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by Town to provide architectural, engineering, or other design professional services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

Engineer means the Town Engineer and his or her authorized delegees.

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents to the Town's satisfaction, including all punch list items and any required commissioning or training, and has provided the Town with all required submittals, including the instructions and manuals, product warranties, and as-built drawings.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code § 900 et seq.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

Including, whether or not capitalized, means "including, but not limited to," unless the context clearly requires otherwise.

Inspector means the individual(s) or firm(s) retained or employed by Town to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Plans means the Town-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

Project means the public works project referenced in the Contract, as modified by any Project alternates elected by Town, if any.

Project Manager means the individual designated by Town to oversee and manage the Project on Town's behalf and may include his or her authorized delegee(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or **RFI** means Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to Town in the manner and format specified by Town.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to Town acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into the Contract by or on behalf of Town, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

Town means the Town of Los Gatos, acting through its Town Council, officers, employees, Town Engineer, and any other authorized representatives.

Town Engineer means the Engineer for Town and his or her authorized delegee(s).

Work means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or **Working Day**, whether or not capitalized, means a weekday when the Town is open for business, and does not include holidays observed by the Town.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 - Roles and Responsibilities

2.1 Town.

- A. **Town Council.** The Town Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.
- B. **Engineer.** The Engineer, acting within the authority conferred by the Town Council, is responsible for administration of the Project on behalf of Town, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.
- C. **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as Town's representative for daily administration of the Project on behalf of Town. Unless otherwise specified, all of Contractor's communications to Town (in any form) will go to or through the Project Manager. Town reserves the right to reassign the Project Manager role at any time or to delegate duties to additional Town representatives, without prior notice to or consent of Contractor.
- D. **Design Professional.** The Design Professional is responsible for the overall design of the Project and, to the extent authorized by Town, may act on Town's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conference, weekly meetings, and coordination meetings. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

2.2 Contractor.

- A. **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of Town, and with minimal inconvenience to the public.
- B. **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by Town or specified in the Contract Documents. From the date of

commencement of the Work until either the date on which Town formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism, or theft.

- C. **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.
- D. **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to Town, and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to Town. Town's approval of the superintendent is required before the Work commences. If Town is not satisfied with the superintendent's performance, Town may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to Town, as soon as practicable, before replacing the superintendent.
- E. **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents, Laws, and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.
- F. **Meetings.** Contractor, its project manager, superintendent and any primary Subcontractors requested by Town, must attend a pre-construction conference, if requested by Town, as well as weekly Project progress meetings scheduled with Town. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by Town, other contractors, or other utility owners.
- G. **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including

injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the Town, Contractor will permit review of and/or provide copies of any of these construction records.

- H. **Responsible Party.** Contractor is solely responsible to Town for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon Town's written request, Contractor must promptly and permanently remove from the Project, at no cost to Town, any employee or Subcontractor or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.
- I. **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by Town to be deficient or defective in any way, including workmanship, materials, parts, or equipment. Workmanship, materials, parts, or equipment that do not conform to the requirements under the Plans, Specifications, and other Contract Documents, as determined by Town, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by Town, and any Extra Work performed without Town's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from Town, or within the time specified in Town's notice to correct, Town may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If Town elects to correct defective Work due to Contractor's failure or refusal to do so, Town or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on Town property, in order to effectuate the correction, at no extra cost to Town. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by Town's actions to correct defective Work under these circumstances. Alternatively, Town may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.
- J. **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

1. Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.
2. Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after Town's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, Town is entitled to inspect or audit any of Contractor's records relating to the Project during Contractor's normal business hours. Contractor's records may also be subject to examination and audit by the California State Auditor, pursuant to Government Code § 8546.7. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

- K. **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to Town for reference at all times during construction of the Project.

2.3 Subcontractors.

- A. **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. Town reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the Subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a Town business license before performing any Work.
- B. **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to Town. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and Town, but

Town is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

- C. **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to Town, subject to the prior rights of any surety, but only if and to the extent that Town accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.
- D. **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code § 4107, Contractor is solely responsible for all costs Town incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If Town determines that a Subcontractor is unacceptable to Town based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code § 4107(a), Town may request removal of the Subcontractor from the Project. Upon receipt of a written request from Town to remove a Subcontractor pursuant to this paragraph, Contractor will immediately remove the Subcontractor from the Project and, at no further cost to Town, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to Town, in compliance with Public Contract Code § 4107, as applicable.

2.4 Coordination of Work.

- A. **Concurrent Work.** Town reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by Town. To the full extent permitted by law, Contractor must hold harmless and indemnify Town against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.
- B. **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement

by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify Town if work performed by others, including work or activities performed by Town's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. Town reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

2.5 Submittals. Unless otherwise specified, Contractor must submit to the Engineer for review and acceptance, all schedules, Shop Drawings, samples, product data, and similar submittals required by the Contract Documents, or upon request by the Engineer. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in the Notice to Proceed.

- A. **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.
- B. **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current Town-accepted schedule for the Work and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.
- C. **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).
- D. **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.
- E. **Effect of Review and Acceptance.** Review and acceptance of a submittal by Town will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by Town is not an assumption of risk or liability by Town.
- F. **Enforcement.** Any Work performed or any material furnished, installed, fabricated or used without Town's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of Town, including costs for the Design Professional, Project Manager, or Inspector.

- G. **Excessive RFIs.** A RFI will be considered excessive or unnecessary if Town determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. Town's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

2.6 Shop Drawings. When Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by Town, Shop Drawings must be provided to the Engineer for review and acceptance at least 30 days before the Work will be performed. If Town requires changes, the corrected Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by Town. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by Town does not relieve Contractor of Contractor's responsibility.

2.7 Access to Work. Contractor must afford prompt and safe access to any Worksite by Town and its employees, agents, or consultants authorized by Town; and upon request by Town, Contractor must promptly arrange for Town representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

2.8 Personnel. Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on the Project in any capacity without Town's prior written consent.

Article 3 - Contract Documents

3.1 Interpretation of Contract Documents.

- A. **Plans and Specifications.** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the drawing(s) at issue are dated later than

the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in Town's possession that is necessary for Contractor to form its own conclusions.

- B. ***Duty to Notify and Seek Direction.*** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from Town before proceeding further with the related Work. The RFI must notify Town of the issue and request clarification, interpretation or direction. The Engineer's clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining Town's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that Town's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Articles 5 and 6.)
- C. ***Figures and Dimensions.*** Figures control over scaled dimensions.
- D. ***Technical or Trade Terms.*** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.
- E. ***Measurements.*** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.
- F. ***Compliance with Laws.*** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:

1. Change Orders;

2. Addenda;
3. Contract;
4. Notice to Proceed;
5. Appendix B – Federal Contract Requirements (only if used);
6. Special Conditions;
7. General Conditions;
8. Payment and Performance Bonds;
9. Specifications;
10. Plans;
11. Notice of Potential Award;
12. Notice Inviting Bids;
13. Appendix A – Federal Bidding Requirements (only if used);
14. Instructions to Bidders;
15. Contractor's Bid Proposal and attachments;
16. Standard Plans (Attachment B); and
17. Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as the Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Caltrans Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Special Provisions:

- A. **Limitations.** The "General Provisions" of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.
- B. **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by Town, the provision in the Contract Documents will govern.

C. **Meanings.** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:

1. Any reference to the "Engineer" is deemed to mean the Town Engineer.
2. Any reference to the "Special Provisions" is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.
3. Any reference to the "Department" or "State" is deemed to mean Town.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report provided by Town or appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that Town or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

3.5 Current Versions. Unless otherwise specified by Town, any reference to standard specifications, technical specifications, or any Town or state codes or regulations means the latest specification, code, or regulation in effect on the date that bids were due.

3.6 Conformed Copies. If Town prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor's responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor's sole expense.

3.7 Ownership. No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from Town. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and Town will retain all rights to such works, including the right to possession.

Article 4 - Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten days following issuance of the Notice of Potential Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.

- A. **Surety.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from Town, Contractor must substitute a surety acceptable to Town. If Contractor fails to substitute

an acceptable surety within the specified time, Town may, at its sole discretion, withhold payment from Contractor until the surety is replaced to Town's satisfaction, or terminate the Contract for default.

- B. ***Supplemental Bonds for Increase in Contract Price.*** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from Town pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless Town, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. Town will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code § 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

4.3 Insurance. No later than ten days following issuance of the Notice of Potential Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to Town. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract, through the date of Town's acceptance of the Project. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, Town may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.

- A. ***Policies and Limits.*** The following insurance policies and limits are required for this Contract, unless otherwise specified in the Special Conditions:

1. **Commercial General Liability (“CGL”) Insurance:** The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work, including contractor’s protective coverage, contractual liability, products and completed operations, and broad form property damage, with limits of at least \$2,000,000 per occurrence and at least \$4,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including required endorsements.
 2. **Automobile Liability Insurance:** The automobile liability insurance policy must provide coverage of at least \$2,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired and non-owned auto liability.
 3. **Workers’ Compensation Insurance and Employer’s Liability:** The workers’ compensation and employer’s liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by the statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.
- B. **Notice.** Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days written notice to Town, unless due to non-payment of premiums, in which case ten days written notice must be made to Town.
- C. **Waiver of Subrogation.** Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against Town.
- D. **Required Endorsements.** The CGL policy, automobile liability policy, pollution liability policy, and builder’s risk policy must include the following specific endorsements:
1. The Town, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, “Additional Insured”) must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract. The additional insured endorsement must be provided using ISO form CG 20 10 11 85 or equivalent form(s) approved by the Town.
 2. The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

3. The insurance provided by Contractor is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss.
 4. This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- E. **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.
- F. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions that apply to the required insurance (collectively, "deductibles") in excess of \$100,000 are subject to approval by the Town's Risk Manager, acting in his or her sole discretion, and must be declared by Contractor when it submits its certificates of insurance and endorsements pursuant to this Section 4.3. If the Town's Risk Manager determines that the deductibles are unacceptably high, at Town's option, Contractor must either reduce or eliminate the deductibles as they apply to Town and all required Additional Insured; or must provide a financial guarantee, to Town's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.
- G. **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability or builder's risk insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in writing in advance by the Town's Risk Manager. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the Town, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

Article 5 - Contract Time

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.
- A. **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all requirements of the Contract

Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.

- B. **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.
- C. **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If Town determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, Town may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to Town, in order to achieve a rate of progress satisfactory to Town. If Contractor fails to comply with Town's directive in this regard, Town may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use Town's own forces to achieve the necessary rate of progress. Alternatively, Town may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. Contractor must prepare all schedules using standard, commercial scheduling software acceptable to the Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

- A. **Baseline (As-Planned) Schedule.** Within ten calendar days following Town's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to Town for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials, and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by Town, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.
 - 1. **Specialized Materials Ordering.** Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase order date(s).

- B. ***Town's Review of Schedules.*** Town will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. Town's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit Town's right to assess liquidated damages for Contractor's unexcused failure to do so.
- C. ***Progress Schedules.*** After Town accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by Town, for review and acceptance with each application for a progress payment, or when otherwise specified by Town, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to Town of any changes in the projected material or equipment delivery dates for the Project.
1. ***Float.*** The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.
 2. ***Failure to Submit Schedule.*** Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which Town has noted exceptions that are not corrected, Town may withhold up to five percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and Town has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code § 7102.
- D. ***Recovery Schedule.*** If Town determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.
- E. ***Effect of Acceptance.*** Contractor and its Subcontractors must perform the Work in accordance with the most current Town-accepted schedule unless otherwise directed by Town. Town's acceptance of a schedule does not operate to extend the time for completion of the Work or

any component of the Work, and will not affect Town's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

- F. **Posting.** Contractor must at all times prominently post a copy of the most current Town-accepted progress or recovery schedule in its on-site office.
- G. **Reservation of Rights.** Town reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by Town or others, or to facilitate Town's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.
- H. **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding holidays, during Town's normal business hours, except as provided in the Special Conditions or as authorized in writing by Town. Town reserves the right to charge Contractor for additional costs incurred by Town due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

- A. **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that Town has a reasonable opportunity to mitigate or avoid the delay.
- B. **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.
- C. **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, Town-approved schedule. Contractor will be entitled to a non-compensable

extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

1. Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.
2. Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.
3. Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.

D. **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight, and diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:

1. weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
2. Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
3. Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;
4. foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to Contractor;
5. Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;
6. performance or non-performance by Contractor's Subcontractors or suppliers;
7. the time required to respond to excessive RFIs (see Section 2.5(G));
8. delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
9. time required for repair of, re-testing, or re-inspection of defective Work;
10. enforcement of Laws by Town, or outside agencies with jurisdiction over the Work; or

11. Town's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.
- E. **Compensable Delay.** Pursuant to Public Contract Code § 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by Town, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay.
- F. **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by Town. Recoverable Costs will not include home office overhead or lost profit.
- G. **Request for Extension of Contract Time or Recoverable Costs.** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to Town within 30 calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.
1. **Required Contents.** The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.
 2. **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost

must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

3. *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to Town.
4. *Burden of Proof.* Contractor has the burden of proving that: the delay was an Excusable Delay or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.
5. *Legal Compliance.* Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code § 7102.
6. *No Waiver.* Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of Town's right to assess liquidated damages for Non-Excusable Delay.
7. *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on Town's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, Town will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code § 7203, if Contractor fails to achieve Final Completion within the Contract Time due to Contractor's Non-Excusable Delay, Town will charge Contractor in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the Town Council or its authorized delegatee.

- A. **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay or Compensable Delay, as set forth above.
- B. **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.
- C. **Setoff.** Town is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, Town is entitled to recover the balance from Contractor or its performance bond surety.
- D. **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute Town's acceptance of the Project and will not operate as a waiver of Town's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.
- E. **Other Remedies.** Town's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. Town retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

- A. **Town-Directed Changes.** Town may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with Town-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and Town have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from "value engineering" pursuant to Public Contract Code § 7101, except to the extent authorized in advance by Town in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

- B. **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a Town-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that Town and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by Town. If Contractor refuses to perform the Work in dispute, Town may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, Town may elect to terminate the Contract for convenience or for cause. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.
- C. **Extra Work.** Town may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by Town in accordance with the original Contract Documents, even if Contractor and Town have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both Town and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.
- D. **Minor Changes and RFIs.** Minor field changes, including RFI replies from Town, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within

his or her scope of authority, do not require a Change Order. By executing an RFI reply from Town, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

- E. **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a Town-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, Town may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

- A. **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within 30 calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If Town requests that Contractor propose the terms of a Change Order, unless otherwise specified in Town's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving Town's request, in a form satisfactory to the Engineer.
- B. **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.
- C. **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit Town to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.
- D. **Required Form.** Contractor must use Town's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by Town.
- E. **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein, are deemed waived."

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to Town-authorized time and material Work, and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the Town's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

- A. **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1, Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.
- B. **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.
- C. **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by Town in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:
 - 1. All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;
 - 2. All direct material costs provided by the Contractor, including sales tax, plus 15% markup;
 - 3. All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;
 - 4. All direct additional subcontract costs plus 10% markup for Work performed by Subcontractors; and
 - 5. Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, Town may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that the Town believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

Article 7 - General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

- A. **Permits, Fees, and Town Business License.** Contractor must obtain and pay for all permits, fees, and licenses required to perform the Work, including a Town business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide Town with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.
- B. **Taxes.** Contractor must pay for all taxes on labor, material, and equipment, except Federal Excise Tax to the extent that Town is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the Town prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

- A. **Utilities.** Contractor must install and maintain the power, water, sewer, and all other utilities required for the Project site, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.
- B. **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to Town's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 Noninterference and Site Management. Contractor must avoid interfering with Town's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected

parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

- A. **Offsite Acquisition.** Unless otherwise provided by Town, Contractor must acquire, use, and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.
- B. **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide Town with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding Town harmless from any related liability, in a form acceptable to the Town Attorney.
- C. **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

7.4 Signs. No signs may be displayed on or about Town's property, except signage which is required by Laws or by the Contract Documents, without Town's prior written approval as to size, design, and location.

7.5 Project Site and Nearby Property Protections.

- A. **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the Town has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by Town, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, Town's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for Town, including damage related to Contractor's failure to adequately secure the Work or any Worksite.
 - 1. Subject to Town's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; Town's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.
 - 2. Town wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify Town and establish a plan, subject to Town's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

3. Contractor must remove with due care, and store at Town's request, any objects or material from the Project site that Town will salvage or reuse at another location.
 4. If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, Town may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.
 5. Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.
- B. **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless Town approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from Town.
- C. **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the Town and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.
- D. **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to Town's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.
- E. **Notification of Property Damage.** Contractor must immediately notify the Town of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to Town of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if

applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to Town.

7.6 Materials and Equipment.

- A. **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until Town has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.
- B. **Town-Provided.** If the Work includes installation of materials or equipment to be provided by Town, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify Town of any defects discovered in Town-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.
- C. **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices, or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

- A. **"Or Equal."** Any Specification designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item or service in every aspect of design,

function, and quality, as determined by Town, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

- B. ***Request for Substitution.*** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.
- C. ***Substantiation.*** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.
- D. ***Burden of Proving Equality.*** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. Town has sole discretion to determine whether a proposed substitution is equal, and Town's determination is final.
- E. ***Approval or Rejection.*** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by Town.
- F. ***Contractor's Obligations.*** Town's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

- A. ***General.*** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by Town at all times and at all locations during construction and/or fabrication, including at any Worksite, shops, and yards. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither Town's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.
- B. ***Scheduling and Notification.*** Contractor must cooperate with Town in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no later than noon of the Working

Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized Town holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse Town for the cost of the overtime inspection or testing. Such costs, including the Town's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

- C. **Responsibility for Costs.** Town will bear the initial cost of inspection and testing to be performed by independent consultants retained by Town, subject to the following exceptions:
1. Contractor will be responsible for the costs of any subsequent inspections or tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
 2. Contractor will be responsible for inspection costs, at Town's hourly rates, for inspection time lost because the Work is not ready, or Contractor fails to appear for a scheduled inspection.
 3. If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
 4. Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
 5. Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.
- D. **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection or testing of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the inspection(s) or testing required by the Contract Documents will be subject to rejection by Town.
- E. **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.
- F. **Final Inspection.** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Project Site Conditions and Maintenance. Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to Town's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

- A. **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).
- B. **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If Town determines that the dust control is not adequate, Town may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.
- C. **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.
 - 1. Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by Town, will be Contractor's property.
 - 2. Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on Town streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.
- D. **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

- E. **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by Town.
- F. **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any Town clean up order, Town may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and deduct the cost from any amounts due or to become due to Contractor.

7.10 Instructions and Manuals. Contractor must provide to Town three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for Town to easily maintain and service the materials and equipment installed for this Project.

- A. **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to Town at least ten days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to Town for review.
- B. **Training.** Contractor or its Subcontractors must train Town's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate as-built set of the Plans which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

- A. **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Town may withhold the estimated cost for Town to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of Town. Actual locations to scale must be identified on the as-

built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

- B. **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Engineer for review and acceptance as a condition precedent to Final Completion and Final Payment.

7.12 Existing Utilities.

- A. **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.
- B. **Unidentified Utilities.** Pursuant to Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by Town in the Contract Documents, Contractor must immediately provide written notice to Town and the utility. Town assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by Town's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Contractor must comply with all applicable requirements in Government Code § 4216 et seq., which are incorporated by reference herein.

7.14 Trenching and Excavations of Four Feet or More. As required by Public Contract Code § 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

- A. **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to Town if Contractor finds any of the following conditions:
1. Material that Contractor believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;
 2. Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids; or
 3. Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.
- B. **Town Investigation.** Town will promptly investigate the conditions and if Town finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, Town will issue a Change Order.
- C. **Disputes.** In the event that a dispute arises between Town and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by Town, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and Town.

7.15 Trenching of Five Feet or More. As required by Labor Code § 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to Town for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. Except as otherwise specified, Town will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify Town sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed

surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

- A. **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").
- B. **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by Town. If required by Town, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At Town's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into Town's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

- A. **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").
- B. **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in Town's principal administrative offices, and Contractor must comply with it without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Noise Control. Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.

7.21 Mined Materials. Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code § 2710 et seq., any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation included on the AB 3098 List, which may be accessed online at: <https://www.conservation.ca.gov/smgb/Pages/AB-3098-List.aspx>.

Article 8 - Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. If a Bid Schedule was submitted with Contractor's bid, the amounts in the schedule of values must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

- A. **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.
- B. **Deleted or Reduced Work.** Contractor will not be compensated for Work that Town has deleted or reduced in scope, except for any labor, material, or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

- A. **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents.
- B. **Payment of Undisputed Amounts.** Town will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. Town will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct or withhold additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. Town may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount

requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. Town may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

- A. For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, Town may withhold or deduct an amount based on the Town's estimated cost to correct or complete the Work.
- B. For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Project site, Town may deduct an amount based on the estimated cost to repair or replace.
- C. For Contractor's failure to pay its Subcontractors and suppliers when payment is due, Town may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.
- D. For Contractor's failure to timely correct rejected, nonconforming, or defective Work, Town may withhold or deduct an amount based on the Town's estimated cost to correct or complete the Work.
- E. For any unreleased stop notice, Town may withhold 125% of the amount claimed.
- F. For Contractor's failure to submit any required schedule or schedule update in the manner specified or within the time specified in the Contract Documents, Town may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.
- G. For Contractor's failure to maintain or submit as-built documents in the manner specified or within the time specified in the Contract Documents, Town may withhold or deduct an amount based on the Town's cost to prepare the as-builts.
- H. For Work performed without Shop Drawings that have been accepted by Town, when accepted Shop Drawings are required before proceeding with the Work, Town may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.
- I. For fines, payments, or penalties assessed under the Labor Code, Town may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.
- J. For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, Town may withhold or deduct such amounts from payment otherwise due to Contractor.

8.4 Early Occupancy. Neither Town's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. Town will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment of Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following Town's acceptance of the Project.

- A. ***Substitution of Securities.*** As provided by Public Contract Code § 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by Town. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code § 22300 and will be subject to approval as to form by Town's legal counsel. If Town exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (g) of Public Contract Code § 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes Town's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.
- B. ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3, Adjustment of Payment Application, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by Town's governing body or authorized designee pursuant to Section 11.1(C), Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code § 7107(c).

8.6 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.

- A. ***Withholding for Stop Notice.*** Pursuant to Civil Code § 9358, Town will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by Town for

the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

- B. **Joint Checks.** Town reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if Town determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the Town Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between Town and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.7 Final Payment. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, Town reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that Town acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to Town exceeds the amount of Final Payment, Town retains the right to recover the balance from Contractor or its sureties.

8.8 Release of Claims. Town may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing Town with a written waiver and release of all claims against Town arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code § 7100. Any disputed amounts may be specifically excluded from the release.

8.9 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to Town free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 - Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

- A. **Eight Hour Day.** Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.
- B. **Penalty.** Pursuant to Labor Code § 1813, Contractor will forfeit to Town as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.
- C. **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.
- D. **Notices.** Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code §§ 1720, 1720.3, or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the Town and available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Project site.

- A. **Penalties.** Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to Town as a penalty up to \$200.00 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- B. **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code §§ 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for monthly electronic submission of payroll records to the DIR.

- A. **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - 1. The information contained in the payroll record is true and correct; and
 - 2. Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.

- B. **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to Town, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.
- C. **Enforcement.** Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion thereof, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

9.5 Labor Compliance. Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

Article 10 - Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.

- A. **Reporting Requirements.** Contractor must immediately notify the Town of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to Town of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to Town.
- B. **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide Town with copies of all notices required by Laws.
- C. **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.
- D. **Remedies.** If Town determines, in its sole discretion, that any part of the Work or Project site is unsafe, Town may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective

measures to Town's satisfaction. If Contractor fails to promptly take the required corrective measures, Town may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with Town's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to Town. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor is solely responsible for complying with § 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Laws, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and Town.

- A. **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.
- B. **Labeling.** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

10.4 Hazardous Condition. Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the Town if, under the circumstances, there is inadequate time to seek prior authorization from the Town.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

- A. **Final Inspection and Punch List.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Town requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, Town will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include Town's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the Town or by a third party retained by the Town due to Contractor's failure to timely complete any such outstanding item.
- B. **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by Town's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to Town's satisfaction.
- C. **Acceptance.** The Project will be considered accepted upon Town Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the Town may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.
- D. **Final Payment and Release of Retention.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, Town may withhold up to 150% of Town's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

- A. **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from

defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At Town's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

- B. **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.
- C. **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply Town with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.
- D. **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be co-guarantor of such Work.
- E. **Contractor's Obligations.** Upon written notice from Town to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to Town's satisfaction.
- F. **Town's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by Town, or sooner if required by the circumstances, Town may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse Town for its costs in accordance with subsection (H), below.
- G. **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, Town may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse Town for its costs in accordance with subsection (H), below.
- H. **Reimbursement.** Contractor must reimburse Town for its costs to repair under subsections (F) or (G), above, within 30 days following Town's submission of a demand for payment pursuant to this provision. If Town is required to initiate legal action to compel Contractor's compliance with

this provision, and Town is the prevailing party in such action, Contractor and its surety are solely responsible for all of Town's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein, in addition to any and all costs Town incurs to correct the defective Work.

11.3 Use Prior to Final Completion. Town reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if Town has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion.

- A. **Non-Waiver.** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of Town's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.
- B. **Town's Responsibility.** Town will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to Town acceptance of the Project, except for warranty work performed under this Article.

Article 12 - Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

- A. **Definition.** "Claim" means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, when the demand has previously been submitted to Town in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by Town, in whole or in part. A Claim may also include that portion of a unilateral Change Order that is disputed by the Contractor.
- B. **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and Town. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to

submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to Town in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by Town.

- C. **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount and applies in addition to the provisions of Public Contract Code § 9204 and § 20104 et seq., which are incorporated by reference herein.
- D. **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.
- E. **Informal Resolution.** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and Town.

12.2 Claims Submission. A Claim must be submitted in writing by registered or certified mail with return receipt requested, and must comply with the following requirements:

- A. **Substantiation.** The Claim must be submitted to Town in writing, clearly identified as a “Claim” submitted pursuant to this Article 12 and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of Town’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.
- B. **Claim Format and Content.** A Claim must be submitted submitted in writing by registered or certified mail with return receipt requested in the following format:
 - 1. Provide a cover letter, specifically identifying the submission as a “Claim” submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).
 - 2. Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of Town's rejection of that demand, in whole or in part.

3. Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for each separate issue or Claim:
 - a. A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - b. Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);
 - c. A chronology of relevant events; and
 - d. Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.
4. Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.
5. Include the following certification, executed by Contractor's authorized representative: "The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

C. *Submission Deadlines.*

1. A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 30 days following the date that Town notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 30 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.
2. With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.

3. A Claim disputing the amount of Final Payment must be submitted within 30 days of the effective date of Final Payment, under Section 8.7, Final Payment.
4. Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. ***Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.***

12.3 Town's Response. Town will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of Town and Contractor or as otherwise allowed under Public Contract Code § 9204. However, if Town determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, Town may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that Town may have against the Claim.

- A. ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of Town and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.
- B. ***Non-Waiver.*** Any failure by Town to respond within the times specified above will not be construed as acceptance of the Claim, in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes Town's written response, or Town fails to respond within the specified time, within 15 days of receipt of Town's response or within 15 days of Town's failure to respond within the applicable 45-day time period under Section 12.3, respectively, Contractor may notify Town of the dispute in writing sent by registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify Town of the dispute and demand an informal conference to meet and confer in writing within the specified time, Contractor's Claim will be deemed waived.

- A. ***Schedule Meet and Confer.*** Upon receipt of the demand to meet and confer, Town will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.
- B. ***Location for Meet and Confer.*** The meet and confer conference will be scheduled at a location at or near Town's principal office.
- C. ***Written Statement After Meet and Confer.*** Within ten working days after the meet and confer has concluded, Town will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

- D. ***Submission to Mediation.*** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the Town issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

12.5 Mediation and Government Code Claims.

- A. ***Mediation.*** Within ten working days after the Town issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, Town and Contractor will mutually agree to a mediator, as provided under Public Contract Code § 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.
- B. ***Government Code Claims.***
1. Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.
 2. The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-

availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The Town will not be directly liable to any Subcontractor or supplier.

12.9 Legal Proceedings. In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the Town's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the Town reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.

12.10 Other Disputes. The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by Town. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

13.1 Suspension for Cause. In addition to all other remedies available to Town, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, Town may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to Town's satisfaction.

- A. **Notice of Suspension.** Upon receipt of Town's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Project.
- B. **Resumption of Work.** Upon receipt of the Town's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.
- C. **Failure to Comply.** Contractor will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

- D. **No Duty to Suspend.** Town's right to suspend the Work will not give rise to a duty to suspend the Work, and Town's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

13.2 Suspension for Convenience. Town reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for Town's convenience. Upon notice by Town pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by Town except for taking measures to protect completed or in-progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. Town may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

Default. Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

- A. **Notice of Default and Opportunity to Cure.** Upon Town's declaration that Contractor is in default due to a material breach of the Contract Documents, if Town determines that the default is curable, Town will afford Contractor the opportunity to cure the default within ten days of Town's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.
- B. **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, Town may issue written notice to Contractor and its performance bond surety of Town's termination of the Contract for default.

- C. **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond within seven calendar days from the date of the notice of termination pursuant to paragraph (C), Town may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that Town determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by Town to complete the Work following termination, where "additional cost" means all cost in excess of the cost Town would have incurred if Contractor had timely completed Work without the default and termination. In addition, Town will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on Town property for the purposes of completing the remaining Work.
- D. **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to Town of all equipment and materials for the Project for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to Town's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by Town, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from Town of the total compensation to be paid by Town.
- E. **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. Town reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

- A. **Compensation to Contractor.** In the event of Town's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:

1. **Completed Work.** The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;
2. **Demobilization.** Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and
3. **Termination Markup.** Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

- B. **Disputes.** If Contractor disputes the amount of compensation determined by Town pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from Town of total compensation to be paid by Town.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

- A. **General.** Upon termination, Town may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to Town.
- B. **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to Town all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.
- C. **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:
1. Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with Town's instructions for cessation of labor and securing the Project and any other Worksite(s).
 2. Comply with Town's instructions to protect the completed Work and materials, using best efforts to minimize further costs.
 3. Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.

4. As directed in the notice, Contractor must assign to Town or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to Town's approval.
 5. As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to Town.
- D. **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.
- E. **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code § 7103.5, Contractor and its Subcontractors agree to assign to Town all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time Town tenders Final Payment to Contractor, without further acknowledgement by the parties.

14.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.

14.3 Waiver. Town's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by Town. Town's waiver of any breach, failure, right, or remedy will not be deemed a waiver of

any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by Town.

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

14.5 Statutory and Regulatory References. With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.

14.6 Survival. The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6 of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7, Ownership, Section 4.2, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

6. General Constructions Requirements

6.1. General Construction Requirements

Project Plans

The attached “Locations of Work” found in **Attachment A** shall be considered as the Plans.

Mobilization

Mobilization shall not be separately paid for but shall be considered as included in the payments for other items of work. This shall include full compensation for furnishing all labor and materials, including tools, equipment and incidentals, and for performing all of the work involved in placing, removing, storing, maintaining, moving to new locations, replacing and disposing of equipment and materials as specified in the Standard Specifications, these Special Provisions, and as directed by the Engineer.

Order of Work

Order of Work shall conform to the provisions in Section 5-1.02, “Contract Components,” of the Standard Specifications and these Special Provisions.

At least five (5) working days before any work is started, the Contractor shall furnish to the Engineer a written schedule for the work, listing the dates on which individual areas are to be subject to project related work and the extent of impact caused by the work. Additionally, the Contractor shall submit any request for approval for special traffic consideration including but not limited to lane closures, etc. The Contractor shall thenceforth adhere diligently to said written schedule in the prosecution of the work.

Work for this project needs to be coordinated with the 2024 Annual Street Repair and Resurfacing Project. Resurfacing work will generally follow the concrete work but certain work may need to occur around the same time. The Engineer shall be the main contact for the coordination of the work.

The location may not be available for work if scheduling is not requested by the Contractor and approved by the Engineer (5) working days prior to the desired workday.

Cooperation

Attention is directed to Section 5-1.36C, “Nonhighway Facilities,” of the Standard Specifications.

It is the Contractor’s responsibility to work with utility companies to coordinate the removal, relocation, raising to grade, installation of the new facilities, or any other utility work as shown on the plans or indicated in the specifications with the appropriate utility company. The Contractor shall provide advance notification and shall allow sufficient time and work space for the utility company to complete the work necessary.

If in the opinion of the Engineer, the Contractor’s operations are delayed by reason of utility facilities not being removed or relocated, the Contractor will be entitled to an extension of time only. The Contractor shall be entitled to no other compensation for such delay.

Progress Schedule

The Contractor shall submit a project progress schedule for approval by the Engineer within eight (8) Working days from the date of the Notice of the Award of Contract or 3 days before the pre-construction conference, whichever comes first. Failure to submit an acceptable progress schedule shall

result in rejection of the Contractor's proposal. The progress schedule shall be in the form specified below unless otherwise specified in the Special Provision or approved by the Engineer. Updated progress schedules shall be provided by the Engineer monthly with the estimates of work required in Section 9-1.16, "Progress Payments," of the Standard Specifications. No partial payments will be made for any work until an updated schedule has been submitted and approved by the Engineer. Updated schedules shall incorporate all current schedule information, including actual progress, approved time adjustments, and proposed changes in sequence and logic.

The Contractor must furnish a computerized schedule prepared by the critical path method (CPM) which shows the order in which the Contractor proposes to carry out the work; the sequence and interdependence of construction activities; all salient features of the work (including procurement of materials and equipment); the dates on which the Contractor will start the salient features of the work; and the scheduled dates for completing the said salient features. The construction schedule shall include:

- a. Time for submittals and reviews;
- b. Time for fabrication and delivery of manufactured products for the work; and
- c. The interdependence of procurement and construction activities.

The construction schedule shall:

- a. Be a timescaled network diagram referenced to specific calendar dates;
- b. Include time for the Engineer to review submittals or inspect the work; and
- c. Identify the activities which constitute the controlling operations or critical path.

The construction schedule shall not contain multiple critical paths.

Scheduling of change order work is the responsibility of the Contractor. The Contractor shall revise the schedule to incorporate all activities involved in completing the change order work, and submit a new schedule to the Engineer for review.

Delays or changes to non-critical activities will not be considered for a contract time extension. Non-critical activities are those activities which when delayed, do not affect the contract completion time.

The project schedules submitted shall be consistent in all respects with the time and order of work requirements of the contract. The Engineer, at his or her sole discretion, retains the right to reject any and all construction schedules submitted by the Contractor, including when the Engineer determines that the Contractor has too many items on the Critical Path, or the logic of the schedule is in error, or if the Engineer determines salient items of work are missing from the schedule.

Subject to the above provisions, nothing herein shall preclude the Contractor from early completion of the contract.

The Contractor shall submit updated progress schedules to the Engineer as a condition of approval for the monthly progress payments and final acceptance.

Record Drawings

The Contractor shall keep and maintain on the job site, one record set of drawings. On these, the Contractor shall mark all project conditions, locations, configurations, and any other changes or

deviations which may vary from the details represented on the original contract documents, including buried or concealed construction and utility features which are revealed during the course of construction. Final payment will not be approved until the Contractor prepared record drawings have been delivered to the Engineer.

General Measurement and Payment Requirements

The Contractor shall submit in all field quantities completed to date for payment with each monthly pay estimate. The Contractor shall provide, in writing, who from their team will be responsible for field measuring quantities with the Town's representative. Upon completion of a contract bid item, the Contractor's representative shall field measure the final quantities with the Town's representative. This agreed upon amount will be considered final and no re-measuring of these field quantities will be allowed without the approval of the Engineer. All supporting documentation required for payment of an item, shall be submitted by the Contractor within two pay periods following the work. Documentation submitted more than two pay periods after the work was completed will not be paid and the cost of this work shall be borne by the Contractor.

Truck Routes

Per the Town Ordinance Section 15.30.410, the following streets and highways or portions thereof within the Town limits are designated Truck Routes and are authorized for use by operators of trucks and other vehicles, which exceed a maximum gross weight of ten thousand (10,000) pounds:

- Highway 17
- Los Gatos-Saratoga Road (Highway 9)
- Los Gatos-Almaden Road
- Los Gatos Boulevard
- Blossom Hill Road
- Winchester Boulevard
- Lark Avenue

Other Town streets are unauthorized for truck routes unless otherwise approved by the Engineer.

Hours of Work

Unless otherwise approved in writing by the Engineer or specified in these Special Provisions, the hours of work for this project are Monday through Friday, 8:00 am to 5:00 pm, unless otherwise approved by the Engineer.

No work that interferes with public traffic shall be performed prior to 9:00 am or after 3:00 pm, except as otherwise approved by the Engineer. Lane closures are only allowed between the hours of 9:00 am and 3:00 pm unless otherwise authorized by the Engineer.

Prior to any lane closure, the Contractor shall place a changeable message sign (CMS) one week in advance, stating Construction Dates/Expect Delays/Use Alternate Route.

On streets adjacent to schools, no lane closures are allowed during the school drop-off and pick-up hours. It is the responsibility of the Contractor to confirm the school drop-off and pick-up hours, including any early pick-up days.

The work hours will be strictly enforced. The Engineer has full authority to implement the working hours and completely shut down the construction operations outside the hours of work specified. Should the provisions of this section not be met, liquidated damages of One Thousand Dollars (\$1,000.00) for every 60-minute time period (or portion thereof) beyond the hours of work allowable shall be withheld from moneys due to the Contractor.

24-Hour Contact Number

The Contractor shall assign a project superintendent who has the complete authority to make decisions on behalf of the Contractor. The project superintendent shall be on the job at all times during construction and shall be available and on call 24 hours a day for the duration of the project. The Contractor shall provide to the Engineer and to the Los Gatos-Monte Sereno Police Department a 24-hour contact number for the project superintendent. This number shall not direct calls to a recorder or other message taking service.

Advance Public Notification

Two weeks prior to beginning any work in an area, the Contractor shall deliver written notice to all adjoining residents and businesses, tenants and other applicable parties listed below and all other properties where their only ingress/egress is through the project's work area. Individual or separate notices shall be given for general construction activity in an area as well as specific activities, which will, in any way, inconvenience the resident/property owner/tenant or affect their operations or access to their properties. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration of the activity, and the name, address, and the contact number of the Contractor's superintendent. The Contractor shall provide accurate information regarding the construction schedule and activities to be incorporated into the "two-week" notification. The Contractor shall make every effort to coordinate work with individual residents and businesses whose access will be disrupted in order to minimize the disruption and impacts on the resident or business.

The Contractor shall also prove and hand-deliver a "two-day" notice. The notice shall be distributed two working days prior to the work beginning. The "two-day" notice shall be delivered to all adjoining residents and business, tenants, and other applicable parties listed below and any other properties who sole ingress/egress is through the project's work area.

Copies of all notices shall be provided to the Engineer for approval five (5) working days prior to the desired distribution date.

Should the Contractor's schedule change and/or differ in any capacity from the schedule initially mentioned in the notification to the resident/property owner/tenant or from the updates to the Town website, the Contractor shall re-notify all applicable parties (residents/property owner/tenant and/or businesses mentioned below) five (5) working days prior to the beginning of any work on that street.

The Contractor shall contact and coordinate the work with the following parties throughout the project. The "two-week" and "two-day" notification shall also be given to the following parties prior to beginning any work:

Santa Clara Valley Transportation Agency-(408) 321-2300
West Valley Collection and Recycling-(408) 283-8500

U.S. Postal Service—Postmaster-(408) 395-7526
Los Gatos/Monte Sereno Police Department-(408) 354-8600
Santa Clara County Fire Department-(408) 378-4010

The Contractor shall also give written notice to residents/businesses for any driveway closures or anticipated service disruptions. The Contractor shall coordinate all disruptions with the appropriate utility, property owner, resident, business and the Town. Notice shall be given in advance and specify the duration of the disruption of any utility, and the temporary closure of access to any driveway. Such notice will comply with the requirements for closure of driveway access as specified under “Traffic Control Requirements.”

Lack of proper advance notification and coordination shall result in the work being shut down. All costs associated with the stoppage of work shall be borne by the Contractor.

Line and Grade

The Contractor shall layout the project by providing all stakes and marks needed to establish the lines and grades required for completion of the work specified on the Plans and in these Special Provisions to the satisfaction of the Engineer.

Meetings

Prior to commencement of any work on the project, a pre-construction conference will be scheduled by the Town and held at the Town’s Engineering Building or hosted via virtual meeting for the purpose of review and discussion of the project schedule and construction procedures. The Contractor’s project manager and/or project superintendent and representatives from all listed subcontractors shall be required to attend the pre-construction conference. The Contractor shall prepare and submit at the pre-construction meeting the proposed project schedule, water pollution control plan, traffic control plan, public notification letter, and other submittals as specified in the Special Conditions.

The Contractor shall also schedule and conduct weekly field meetings at locations to be determined by the Town. The meetings shall be held at the same time and place each week and shall include all subcontractors working on the project and discussions of scheduled work on the project during the week of the meeting. The Contractor shall notify the Engineer of the time, date, and location of these meetings 72 hours in advance of the first meeting. Detailed schedules for the following two weeks shall be submitted to the Engineer at each weekly meeting.

Waste Haulers and Recycling Operations

The Contractor shall not impair or impede waste hauler and recycling operations scheduled to be conducted within the project area. It is the Contractor’s responsibility to determine which waste hauler and recycling operators are scheduled to operate within the project area, and to develop a project schedule that will not impair or impede the waste hauler or recycling operations.

Project Appearance and Street Sweeping

The Contractor shall maintain a clean work site. Debris developed during construction shall be disposed concurrently with its generation. Stockpiling of debris or construction materials shall not be allowed unless otherwise approved by the Engineer.

The Town prohibits the use of any public property or public right-of-way locations as construction staging points, unless specifically approved by the Engineer.

Right-of-Way

The Contractor shall operate within the public right-of-way only.

Work in Private Property

The Contractor shall secure right-of-entry agreements with each private property owners before any work in private properties. The language for the right-of-entry agreement must be approved by the Town.

Tree Protection

The Contractor shall comply with the Town Ordinance Chapter 29, Article 1, Division 2, "Tree Protection." The Contractor shall provide protective tree fencing per the Town Ordinance Sec. 29.10.1005, "Protection of trees during construction." The Engineer and Town Arborist shall be notified of any damages that occurs to a protected tree during construction.

Staging/Disposal Areas

The Contractor shall survey the area for construction staging. Staging areas shall not be located in a residential area.

The following requirements shall apply to the contractor's staging area:

- No stockpiles or staging area will be allowed in the right-of-way or on undeveloped lots unless specifically approved by the Engineer
- The staging area will be included in the Contractor's SWPPP
- The staging area will not be located in an environmentally or culturally sensitive area and/or impact water resources (rivers, streams, bays, inlets, lakes, drainage sloughs).
- The staging area will not be located in a regulatory floodway or within the base floodplain (100-year).
- The staging area will not affect access to properties or roadways.

The Contractor shall obtain the approval of the Engineer before staging equipment or storing materials in the public right-of-way or on Town property. In addition, the Contractor shall provide proof of an agreement when using private property for staging, if requested by the Engineer.

All debris shall be hauled off and disposed of the same working day in which the material was generated.

Personal vehicles of the Contractor's employees shall not be parked in the neighborhood or on the traveled way. When entering or leaving roadways carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic and shall travel in the normal direction of travel.

Dust Control

The following requirements shall be applicable to this contract in lieu of the requirements of Section 18, "Dust Palliatives," of the Standard Specifications:

- A. The Contractor shall provide an acceptable plan for preventing the generation of dust due to the Contractor's operations in the construction zones, along the haul routes, or equipment parking areas.

This plan may consist of water sprinkling sweepers or an equivalent service. No separate payment will be made for dust control and all costs in connection therewith shall be included in the payment items to which the work is incidental.

B. In the event the control of dust is not satisfactory to the Owner, the Owner shall take such measures as may be necessary to ensure satisfactory dust control and deduct the cost of such measures from any payments due to the Contractor.

Water for Construction

The costs of water as required for the construction and post-construction on this project, including dust control, shall be considered as included in the costs of items bid for applicable item of work and no separate payment will be made therefor. The Contractor shall conform to the requirements of the water company from which water is purchased. In no case shall the Contractor violate the Town's water conservation ordinance.

Sanitation

The Contractor shall provide for sanitary facilities for the use of the workers on the job. Such facilities shall be placed and maintained by the Contractor so as not to be a nuisance to the neighbors, nor offensive to the senses nor the community standards of decency. The Engineer shall be the sole judge of the adequacy of the facility, the placement, and the maintenance thereof. Upon notification by the Engineer of deficiencies in any of these areas, the Contractor shall make immediate corrections. Failure to take corrective action within 24 hours shall give the Engineer due cause to stop the work in the contract and to order the corrective work to be done on the sanitary facility and to charge all costs of such work against the monies due or to become due to the Contractor.

Water Pollution Control

Water pollution control work shall conform to the provisions in Section 13, "Water Pollution Control," of the Standard Specifications and these Special Provisions, with the exception of payment. Payment shall be covered under "Measurement and Payment" under these Special Provisions.

The Contractor shall be responsible for ensuring that all work conforms to the "Best Management Practices for the Construction Industry" found in the Storm Water Pollution Prevention Plan (SWPPP), the "Blueprint for a Clean Bay" handout found in **Attachment D**, and the Town Code found in **Attachment E**.

The Contractor shall comply with the requirements of the State Water Resource Control Board (SWRCB) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharge Associated with Construction and Land Disturbance Activities.

The Contractor shall not violate any discharge prohibition contained in the California Regional Water Quality Control Board San Francisco Bay Basin Water Quality Control Plan ("Basin Plan").

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work involved in compliance with the Plans, Specifications, and "General Construction Requirements" of the Special Provisions, shall be deemed included in the price paid for other contract items and no additional compensation shall be allowed therefore.

6.2. Traffic Control Requirements

General

Traffic control shall conform to the provisions of Section 12 "Temporary Traffic Control" of the Standard Specifications, Part 6 "Temporary Traffic Control" of the California Manual on Uniform Traffic Control Devices (CA MUTCD) with latest revisions, and these Special Provisions. Nothing in these Special Provisions shall be construed as relieving the Contractor from the responsibilities specified in Section 7-1.04, "Public Safety," of the Standard Specifications and these Special Provisions.

The traffic control plan shall be prepared in compliance with the Caltrans Standard Plans and/or CA MUTCD and shall be prepared by a certified traffic engineer or a qualified traffic control professional. The Contractor shall submit a scaled drawing with detailed information, such as lanes to be closed or narrowed, time and days of operation, transitions, cones and barricades, signs, arrow boards, pedestrian and bicycle provisions, etc. The traffic control plan should show length of transitions, cone spacing, sign spacing, etc. based on the posted speed limits or the posted construction zone speed limits. The traffic control plan shall also include a provision for the Contractor to contact and coordinate with the Valley Transportation Authority (VTA) if a bus stop is affected.

The Contractor shall maintain a safe workplace throughout the job including, but not limited to, providing all flaggers, safety equipment, flashing arrow boards, changeable message signs (minimum of two), traffic control devices; maintenance of barricades, safe pedestrian passages along sidewalks, maintenance of handicap access throughout the project site where applicable and maintenance of pavement within the limits of the roadway and driveways with a suitable traffic bearing surface.

The Contractor shall provide and maintain all necessary traffic control devices to ensure safe pedestrian and vehicular access through and around the job site. Warning signs shall be installed at locations in accordance with the CA MUTCD, Part 6, "Temporary Traffic Control." The Contractor shall fulfill the requirements of this section, 24 hours per day, seven days a week, including holidays, from the time the Notice to Proceed is issued until the project is formally accepted.

Should the Contractor fail to perform these duties, the Engineer, at the Engineer's sole discretion, may elect to have City, or contract forces, perform the duties, deducting the expenses incurred from any moneys that are due, or to become due, to the Contractor. By exercising this option, the Contractor is in no way relieved of the responsibility to perform these duties.

The Contractor shall provide a minimum of two competent and qualified flaggers dedicated solely to directing traffic if traffic lanes have been reduced to only one lane for two-way traffic, in and out of driveways and cross-streets and/or across the construction area as deemed to ensure safe traffic control during construction operations. Flaggers shall be equipped with all necessary tools to properly control the traffic.

Traffic Control/Management Plan

A traffic control plan shall be submitted by the Contractor to the Engineer a minimum of five (5) working days prior to any work commencing on the project. The traffic control plan shall be reviewed and accepted by the Engineer prior to any work commencing on the project. All traffic plans shall be prepared in accordance with the CA MUTCD, Part 6, "Temporary Traffic Control," Section 12, "Temporary Traffic Control," of the Standard Specifications, and these Special Provisions.

No Parking Signs

Prior to the start of work which requires parking restriction, the Contractor shall request approval to post and maintain temporary "No Parking" signs on each street where the operations will take place. It shall be the Contractor's responsibility to post "No Parking" signs in the areas where the Contractor's work will require restricted parking. The Town will provide signs for the Contractor's use. To be enforceable, the signs must be posted not less than 72 hours prior to the start of the work at a maximum spacing of 60 feet. The signs must clearly show the date(s) and hours of the parking prohibition, as well as the date and time the signs were posted, and the project name and contractor's phone number. If the work is not performed during the timeframe indicated on the "No Parking" signs, the work will be rescheduled with at least five (5) working days advance notice. The Contractor shall perform all re-posting of "No Parking" signs and re-notification of businesses, tenants, and residents as a result of his failure to meet the posted schedule. Any delays caused by failure of the Contractor to adhere to the approved schedule will be at the Contractor's sole expense. No additional compensation will be allowed for costs resulting from said delays.

The Contractor shall remove the "No Parking" signs immediately when they are no longer needed for use in the respective area of the project. The Contractor shall notify the Los Gatos/Monte Sereno Police Department directly after posting and immediately upon removal of the said signs at (408) 354-8600.

During the morning of each scheduled workday, the Contractor shall be responsible for calling the Los Gatos/Monte Sereno Police Department Police Dispatch to tow cars, if necessary, as approved by the Engineer. The Contractor shall have available for the police responding to the call photo documentation of the "No Parking" signs being posted if the signs were removed or vandalized the previous night.

Detours, Temporary Striping, and Barriers

Any approved detours or barriers, signing and striping necessary to complete the construction of the project shall be provided, installed, maintained, and removed by the Contractor at his expense. Temporary striping shall be self-sticking traffic marking tape, vinyl or otherwise, developed for such use, and shall be used for temporary striping as required, unless shown otherwise on the plans or specified in the special provisions. No painted temporary striping or markings will be allowed unless the temporary markings will be entirely covered by the permanent markings.

Notify the Los Gatos/Monte Sereno Police Department daily at (408) 354-8600 of street or lane closures or detours within the roadway prior to setting up and upon removal of traffic control devices.

Additional Construction Area Signs and Controls

In addition to the requirements of the CA MUTCD, the following traffic controls will be required as specified by the Engineer. These additional requirements in no way relieve the Contractor from his obligation to comply with the standards set forth in that manual.

- "Road Work Ahead" (Type C-23(CA)) signs shall be posted in advance of the first major cross street before the start of the work zone to allow traffic to avoid the work zone prior to entering the zone. The signs shall also be posted at the approaches to the project site.
- "End Road Work" (Type G20-2) signs shall be placed at all public road exits from the project site.
- The Contractor shall provide, install and maintain a minimum of four (4) lighted barricades for each individual construction site for concrete improvements (i.e. for curb and gutter removal & replacement and for accessibility ramp installation).

- Changeable message signs will be used starting one (1) week prior to construction beginning and will be maintained in place until construction impacts to the public no longer exist as determined by the Engineer.
- “Bikes May Use Full Lane” (R4-11)–modified for temporary construction sign

The Contractor shall be responsible for locating existing poles on which to mount these signs or shall provide temporary stands or poles on which to place the required signs. The Engineer shall approve the method of attachment to existing poles prior to sign installation. No sign shall be mounted on decorative street light poles unless the Contractor can clearly show that the mounting method will not damage the finish on the poles.

Upon completion of the work, the signs and posts shall be removed and disposed of outside the public right of way in conformance with the provisions in the Standard Specifications.

Maintenance of Pedestrian Access and Circulation

Safe pedestrian access and circulation that is fully wheelchair accessible shall be maintained by the Contractor through or around the project area. All walkways, pedestrian crossings, ramps and other pedestrian facilities removed or blocked by the Contractor’s operations shall be replaced with temporary facilities unless otherwise approved by the Engineer.

Pedestrian access at each individual project site may be diverted for a maximum of five (5) calendar days with approved traffic control plan. Drop off from existing improvements to excavated areas shall be temporarily ramped. Ramps shall be maintained at 12:1 or flatter with compacted sub-grade or base rock material until final improvements are installed.

Lane Closures

Requests for lane closures shall be made a minimum of five working days prior to the proposed closure. Once the lane closure has been approved by the Town, the Contractor shall post a minimum of five (5) working days in advance of the proposed lane closure a changeable message sign at the limits of each closure or as specified by the Engineer. These changeable message signs shall also be used on the day of the actual closure. The changeable message signs shall indicate the days and hours of the proposed lane closure and the type of work being done during that lane closure.

Flashing arrow signs shall be used for all lane closures. The Contractor shall check with the Engineer to confirm any lane closure restrictions that may be in effect before closing any lanes.

The Contractor shall leave the streets open to traffic until just prior to starting the work, and will provide all barricades, signs and traffic control measures necessary to protect the work.

No work that interferes with public traffic shall be performed outside of the working hours, except as otherwise approved by the Engineer. All traffic lanes shall be open to traffic outside of the working hours.

A minimum of one paved, or surfaced traffic lanes and one paved bicycle lane, not less than fifteen (15) feet wide (10 foot wide for the traveled vehicle lane and 5 feet wide for the bicycle lane), shall be open for use by public traffic in each direction of travel. Traffic may not be routed over unpaved roadways unless authorized by the Engineer.

In addition, the full width of the traveled way on each street shall be open for public use on Saturdays and Sundays (except for those streets approved by the Engineer for weekend work), on designated legal holidays, and when construction operations are not actively in progress. Designated legal holidays are: January 1, the third Monday in January, the third Monday in February, June 19, the last Monday in May, July 4, the first Monday in September, the fourth Thursday of November, and December 25. When a designated holiday falls on a Saturday, the preceding Friday shall be treated as a legal holiday. When a designated holiday falls on a Sunday, the following Monday shall be treated as a legal holiday.

Deviations from the requirements of this section concerning hours of work, which do not change the cost of the work, may be permitted upon the written request of the Contractor, if in the opinion of the Engineer, the general public will be better served and the work expedited. Such deviations shall not be implemented until the Engineer has provided the Contractor with written approval to do so. All other modifications will be made by contract change order.

The Contractor shall pay the Town liquidated damages in the amount of \$1,000 per hour (or part of an hour) for traffic control that is set-up before the designated and approved hours of work. Liquidated damages for failure to open streets by the required time shall be \$1,000.00 per hour.

Traffic Control System for Lane Closure

A traffic control system shall consist of closing traffic lanes in accordance with the details shown on Caltrans Standard Plans T10, T10A, T11, T11A, T12, T13, T13A, and T13B as shown in Attachment B, the provisions of Section 12, "Temporary Traffic Control," of the 2024 Standard Specifications, and these Special Provisions.

The provisions in this section will not relieve the Contractor from the responsibility to provide additional devices or take measures as may be necessary to comply with the provisions of Section 7-1.04, "Public Safety," of the 2024 Standard Specifications.

Each vehicle used to place, maintain and remove components of a traffic control system on multilane roads shall be equipped with a Type II flashing arrow sign which shall be in operation when the vehicle is being used for placing, maintaining, or removing the components. Vehicles equipped with a Type II flashing arrow sign not involved in placing, maintaining, or removing the components when operated within a stationary type lane closure shall only display the caution display mode. The sign shall be controllable by the operator of the vehicle while the vehicle is in motion.

If any component of the traffic control system is displaced, or ceases to operate or function as specified from any cause, during the progress of the work, the Contractor shall immediately repair the component to its original condition or replace the component, and shall restore the component to its original location.

When lane closures are made for work periods only, at the end of each work period, all components of the traffic control system, except portable delineators placed along open trenches or excavations adjacent to the traveled way, shall be removed from the traveled way and shoulder. If the Contractor so elects, the components may be stored at selected central locations, approved by the Engineer.

Temporary Pavement Delineation

Temporary pavement delineation shall comply with these Special Provisions and with Section 12-3,

“Temporary Traffic Control Devices,” of the 2024 Standard Specifications, CA MUTCD, and these Special Provisions.

Property Access Requirements

The Contractor shall maintain property access to all residents and businesses at all times unless otherwise approved by the Engineer. Upon approval by the Engineer, access to certain properties may be temporarily closed if all of the following conditions can be met:

- a. No options exist to maintain property access and complete the project.
- b. The Contractor has discussed the closure with the resident or business owner in person.
- c. Residents or business owners has been notified, in writing, at least five (5) calendar days in advance of the time and length of closure
- d. Resident or business owners have been reminded of the closure, in writing, at least two (2) working days prior to the actual closure.
- e. The Contractor has provided the resident or business with a contractor name and number to call with questions regarding the closure.
- f. Closure will last no longer than three (3) working days

Signalized Intersections

The Contractor shall be responsible for contacting and coordinating with the Town’s signal maintenance contractor for any work at signalized intersections. No additional working days will be given due to the Contractor for not scheduling the work with the Town’s signal maintenance contractor prior to the start of work.

Measurement and Payment

Full compensation for preparing traffic control plans, temporary pavement delineation plans, providing construction signs, changeable message signs and detour signs, and for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work involved in compliance with the Plans, Specifications, and “Traffic Control Requirements,” of the Special Provisions shall be included and paid for in the appropriate bid item price.

Bid Item #1: Traffic Control (L.S.)

The basis for payment for Bid Item: Traffic Control will be based on the percentage of job completed in each progress payment.

7. Special Conditions

Pre-Construction Conference. Town will designate a date and time for a pre-construction conference with Contractor following Contract execution. Project administration procedures and coordination between Town and Contractor will be discussed, and Contractor must present Town with the following information or documents at the meeting for Town's review and acceptance before the Work commences:

1. Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
2. List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
3. Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;
4. Water pollution control plan;
5. If required, traffic control plans associated with the staging plans that are signed and stamped by a licensed traffic engineer;
6. Draft baseline schedule for the Work as required under Section 5.2 of the General Conditions, to be finalized within ten days after Town issues the Notice to Proceed;
7. 2 week public notification letter;
8. 2 day (48 hour) notice letter;
9. Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to Contractor;
10. Schedule with list of Project submittals that require Town review, and list of the proposed material suppliers;
11. Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;
12. Videotape and photographs recording the conditions throughout the pre-construction Project site, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights, structures near the Project such as building faces, canopies, shades and fences, and any other features within the Project area limits;
13. Any other documents specified in the Special Conditions or Notice of Potential Award.

Close Out Requirements. Contractor's close out requirements include the following, if applicable:

1. Contractor must replace, with thermoplastic, any existing striping within and adjacent to the Project site that is damaged during the Work. Partially damaged striping must be replaced in its entirety.
2. Contractor must replace any survey monuments that are damaged or removed during the Work, with a Record of Survey filed by a licensed land surveyor as required by California law.
3. Before removing any traffic control or street signs on the Project site, Contractor must take photographs showing their original locations. Upon completion of each phase of construction, Contractor must temporarily reset the signs at those locations. Contractor must then replace the signs permanently upon completion of the Work and the cost of their removal and replacement must be included in the Bid Proposal.
4. Contractor must maintain any rural mail boxes on the Project site and relocate them to their permanent locations as soon as possible in the course of the Work, to the satisfaction of the affected property owners and the postal service.

END OF SPECIAL CONDITIONS

8. Technical Specifications

8.1. Concrete Improvements

General

The work described herein this section shall comply with Section 73, "Concrete Curbs and Sidewalks," and Section 90 "Concrete," of the Standard Specifications, the Plans, and these Special Provisions. New improvements shall be constructed in accordance with the detail sheets found in **Attachment B**.

The work includes, but is not limited to the following: the removal and disposal of existing concrete sidewalk, curb, gutter, driveway, and adjacent asphalt pavement and base material; root trimming and pruning; the installation of Class 2 aggregate base; grading; compacting; installation of dowels; installation of rebar; installation and finishing of concrete sidewalk, curb, gutter, and driveway approach improvements; and the installation of the adjacent asphalt pavement restoration next to the adjacent curb, gutter, driveway approach, and curb ramp locations.

The installation of curb ramps shall include the installation of adjacent monolithic curb and gutter, necessary retaining curbs, and other replacement concrete improvements including but not limited to sidewalk and curb and gutter to the nearest joint or up to 10 feet on either side of the ramp to conform to the ramp, curb and gutter, rolled curb and gutter transitions, etc., abutting new curb ramps leading to the next score mark, and the installation of the detectable warning surface. The installation of the driveway approach shall include all necessary concrete improvements, including the curb, gutter, and sidewalk, located within the driveway approach limits.

The curb and gutter portion located within the limits shall be included in the price of driveway approach or curb ramp item.

Concrete for curb and gutter and sidewalks shall meet a minimum compressive strength of 3,000 psi at seven (7) days. Concrete for driveways and the portion of curb and gutter adjacent to the driveway shall have a minimum compressive strength of 4,000 psi at three (3) days (high-early strength).

New improvements shall be constructed within the footprint of the existing improvement unless otherwise directed by the Engineer.

Painted curbs removed and replaced by the Contractor shall be repainted at the Contractor's expense.

Curbs and gutters, sidewalks, and curb ramps shall be constructed to the Town's standards including specified Class 2 aggregate base compacted to 95%.

The limits of removal/replacement and new curb ramp, sidewalk, and curb and gutter installation are found in the Plans found in **Attachment A**. All facilities shall meet current ADA requirements. The curb ramp pay item shall include all the sidewalk and curb and gutter removal, subgrade and base, installation of new sidewalk, curb and gutter, and curb ramp, including detectable warning surface, within the limit of the new curb ramp as shown in the Plans, unless otherwise indicated, and shall be included in the cost per each curb ramp installation and no additional compensation shall be allowed therefore.

Sidewalk, ramp, and curb and gutter removal and replacement shall be marked in the field by the Engineer and shall be confirmed by the Contractor prior to its removal and replacement.

Layout for the curb ramps shall be marked in the field by the Contractor and shall be reviewed by the Engineer prior to its removal and replacement.

The Contractor shall give the Engineer a minimum of one week's notice prior to actual removal and replacement of any concrete improvements. The limits of all removal and replacement shall be from score mark to score mark unless otherwise approved by the Engineer.

Replacement of concrete sidewalk and curb and gutter that is removed to the score mark from the edges of the curb ramp and/or driveway shall be considered as part of the new curb ramp and/or driveway installation and therefore shall be paid for under the associated curb ramp and/or driveway bid items as specified in these Special Provisions.

The subgrade for sidewalks, driveways, aprons, curb ramps, and similar structures below the aggregate shall be compacted to a relative compaction of 95 percent for a depth of 0.5 foot. The subgrade for curb and gutter below the aggregate shall be compacted to a relative compaction of 95 percent for a depth of 0.75 foot. Subgrade prep for concrete improvements shall be paid for under the appropriate bid items for concrete improvements.

Aggregate base for sidewalk, curb and gutter, and curb ramps shall be Class 2, 3/4" maximum and shall conform to the provisions in Section 26, "Aggregate Bases," of the Standard Specifications, the Plans, and these Special Provisions. Existing aggregate base shall be removed from the construction area and shall not be used as backfill material. The cost for aggregate base shall be included in the pay items for sidewalk, curb and gutter, and curb ramp and no additional compensation will be allowed therefore.

New improvements shall not be placed until forms and compaction requirements are inspected and approved by the Engineer. If new concrete improvements are not to the Town's standards and existing conforms are damaged due to new concrete installation, the Contractor shall repair, remove, or replace the deficiency at the Contractor's sole expense.

Portland Cement Concrete shall contain 1 lb. (min.) lamp black per cubic yard. The Contractor shall supply the Town a certificate of compliance that the concrete used on the project meets the required Standard Specifications. Driveways and adjacent improvements shall meet ADA requirements.

At locations where the sidewalk, curb and gutter, and curb ramps connect with existing improvements, steel dowels shall be installed. Dowels shall be 12" long, #4, grade 60, steel reinforcing bars or as indicated on the Plans. Dowels shall be firmly epoxied into existing improvement with a six-inch (6") embedment. Dowels shall be installed prior to placing new sidewalk, curb and gutter, and curb ramp.

Epoxy shall be Type II and conform to Section 95-1.02D, "Epoxy Adhesive for Bonding Freshly Mixed Concrete to Hardened Concrete," of the Standard Specifications. A certificate of compliance is required for the epoxy.

Curb and gutter which are a part of the driveway approach and/or curb ramp shall be constructed monolithically with a straight grade between existing improvements to remain.

Where rolled curb exists, curb ramp installation shall contain curb transitions not less than 10 feet long at both ends of the ramp.

Curb and gutter to be replaced shall be constructed with a straight grade between existing improvements to remain. Flowlines for the curb and gutter and for curb and gutter attached to a curb ramp shall be verified and flow tested by the Contractor in the presence of the Engineer and shall be free from ponding prior to acceptance of the improvements. The Contractor shall replace new concrete improvements if the said improvements do not conform to the designed flowline.

New curb ramps shall be constructed to match the existing grade of the existing improvements that are to remain and shall be in compliance with the details found in the Plans and these Special Provisions.

New concrete shall be free of stamps, logos, names, graffiti, etc. Any concrete identified that is displaying a stamp or equal shall be removed and replaced at the Contractor's sole expense and no additional compensation shall be allowed therefore.

Materials Testing and Inspections

The Contractor shall coordinate with the Town to schedule materials testing and inspections for soil compaction, concrete placement, and for other operations as instructed by the Engineer. The Contractor shall notify the Engineer, at minimum 72 hours in advance, of when compaction testing and concrete sampling for concrete pours are to be scheduled. Materials testing may occur daily during the duration of the project.

Detectable Warning Surface

The Contractor shall install detectable warning surfaces on all new curb ramps or onto existing curb ramps as indicated on the Plans. The color of the detectable warning surface shall match yellow color no. 33538 of AMS -STD-595. The minimum detectable warning surface shall be 4 feet wide by 3 feet deep or as specified in the Standard Plans. Installation of the detectable warning surface on new ramps or passageways shall be included in the appropriate bid item and no additional compensation shall be allowed therefor.

For existing curb ramps, the detectable warning surface shall be cast-in-place and shall not be surface applied. The Contractor may be required to remove the concrete surface beyond the required detectable warning surface depth to conform to the landing. The limits of removal shall be field verified with the Engineer prior to sawcutting and shall be included in the appropriate bid item price and no additional compensation shall be allowed therefor.

Hot Mix Asphalt Pavement Restoration

The hot mix asphalt pavement restoration adjacent to the curb ramp and curb and gutter installations will be a minimum of 24-inches wide on all sides where the adjacent concrete is replaced. The Contractor shall remove a minimum depth of 8 inches or to the top of the native soil, whichever is greater. The replaced hot mix asphalt will be 4 inches thick, on top of a minimum of 4 inches of class II, aggregate base, compacted to a relative compaction of 95% per the Town Standard Drawings. Compaction shall be achieved using a vibratory plate compactor. The paving asphalt shall be PG 64-10. A tack coat of undiluted SS1h emulsified asphalt shall be placed on all exposed HMA and concrete surfaces prior to the placement of the new asphalt section.

The Contractor may elect to perform a 12-inch wide asphalt restoration that will be filled with 6 inches of a 2-sack sand/cement slurry and 2-inches of ½-inch, Type A hot mix asphalt. The Contractor may not place the new hot mix asphalt until the slurry cures and is approved by the Engineer to proceed with the final 2-inch asphalt lift.

The final, top layer of hot mix asphalt adjacent to the curb and gutter shall be ½-inch HMA, Type A, compacted to a relative compaction of 95%, and placed in two, 2-inch lifts. The Contractor is required to use a twin drum, 2.5-ton vibratory roller for compaction of the final lift of hot mix asphalt.

The hot mix asphalt pavement restoration for curb ramps and curb and gutter shall be paid for under the associated bid items and shall comply with these Special Provisions. The area of any pavement restoration work will not be measured as part of the pay items.

The Contractor shall ensure that connections to existing or previously laid surfacing shall conform to the requirements of surface smoothness under the Standard Specifications or the Contractor shall correct all these deficiencies to the satisfaction of the Engineer. The Engineer's decision whether the Contractor has met the requirements of surface smoothness shall be final.

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for performing all the work involved in compliance with the Plans, Specifications, and "Concrete Improvements" of the Technical Specifications, including but not limited to rebar, base rock, and hot mix asphalt, shall be included and paid for in the appropriate bid item price.

Bid Item # 4: Remove and Replace Curb and Gutter (L.F.)

Bid Item #5: Remove and Replace Rolled Curb (L.F.)

Bid Item #6: Remove and Replace Sidewalk (S.F.)

Bid Item #7: Remove and Replace Hardscape (Revocable) (S.F.)

Bid Item #8: Remove and Replace Commercial Concrete Driveway (S.F.)

Bid Item #9: Install New Curb Ramp-Case B (Ea.)

Bid Item #10: Install New Curb Ramp-Case C (Ea.)

Bid Item #11: Install New Curb Ramp-Case F (Ea.)

8.2. Signage

General

Work shall conform to Section 56, "Overhead Sign Structures, Standards, and Poles," and Section 82, "Signs and Markers," of the Standard Specifications, the Plans, the CA MUTCD, and these Special Provisions except as noted herein.

The Contractor shall inventory existing sign locations prior to removal. Signs to be salvaged shall be removed, cleaned, and stored by the Contractor unless another location is specified. For locations where the Contractor is to remove and/or relocate existing signposts as shown on the Plans, the Contractor

shall also remove the existing foundation and/or footing. Voids created by the removal shall be backfilled with cement slurry (2-sack mix) where concrete pavement is to be installed. Voids created by the removal of the signposts not in the concrete pavement area shall be backfilled with soil and compacted to at least 90% relative compaction or as specified by the Engineer.

The street signs that are obstructing the construction work shall be removed and signs shall be installed by the Contractor. New signs shall be placed on a new signpost. Prior to installation, the Engineer shall approve the location of the signs. The Contractor shall call Underground Service Alert (USA) at 1-800-227-2600 prior to digging for the sign pole installation. The Contractor shall neatly core the existing sidewalk, concrete pavement, etc. and shall install the signposts per the Town Standard Plans. The Contractor shall provide all fasteners required to install all signs as indicated on the Plans and as directed by the Engineer.

The Contractor, at the Contractor's sole expense, shall repair materials to be salvaged that are damaged as a result of the Contractor's operations or install a new sign per the Town of Los Gatos Standard Plans to the satisfaction of the Engineer.

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for performing all the work involved in compliance with the Plans, Specifications, and "Signage," of the Technical Specifications, shall be included and paid for in the appropriate bid item price.

Bid Item #13: Remove and Install New Sign and Post (Revocable) (Ea.)

8.3. Existing Facilities

General

Existing Facilities shall conform to Section 15, "Existing Facilities," of the Standard Specifications, the Plans, and these Special Provisions.

Protect Existing Facilities to Remain

The Contractor shall work around and protect all existing improvements to remain, including but not limited to existing utilities, monumentation, bench marks, storm drainage facilities, utility vaults, traffic detector loops, home runs and handholes, concrete and hot mix asphalt pavement, pavement markings, landscaping, irrigation facilities, and appurtenances that are within or adjacent to the construction areas.

The Contractor shall notify Underground Service Alert (USA) prior to beginning any work. Notification shall be in full compliance with USA. At the conclusion of the project, the Contractor must remove all USA markings from all paved and concrete surfaces throughout the job site without damaging said surfaces. The method of removing the USA markings is at the Contractor's discretion.

Existing utility lines are not shown on plans. The Contractor is responsible for locating and field verifying the locations of all existing utilities prior to all construction activities and protecting all facilities during construction. The Contractor shall protect existing electroliers when placing construction signs.

The Contractor shall immediately repair or remove and replace any item damaged or injured by his operations at his sole expense and to the satisfaction of the Engineer. The Contractor shall immediately notify the appropriate owner of the improvement or facility and the Engineer of any damage as a result of his operations to existing improvements or facilities. If the improvement belongs to a private residence and the property owner or occupant is not at home, such notification shall be attached to the front door of the property. All underground facilities that are damaged by the Contractor during construction shall be restored by the Contractor within two (2) hours after the damage is done.

All existing improvements, including but not limited to, irrigation systems, brick work, stone work, fences, mailboxes, turf and landscaping, on public right-of-way which are obstacles to forming operations may be removed as necessary for this type of work. The Contractor shall notify the adjacent property owner and the Engineer prior to removal of any existing improvements. After removing the forms, all the existing improvements shall be restored to their original condition at no additional cost to the Town. If the Contractor fails to comply in providing the necessary restoration work as defined, the Engineer may elect to have the Town or other contract forces perform all these duties, deducting all the expenses incurred from any moneys that are due, or to become due, to the Contractor. By exercising this option, the Contractor is in no way relieved of the responsibilities to perform these duties.

Adjust Facilities to Grade

All existing manholes, traffic signal boxes, handholes, utility covers, utility frames, utility boxes, water meter boxes, sewer cleanouts, cable boxes, vault covers, and monuments within the project limit of work area shall be adjusted to grade in accordance with Section 15, "Existing Facilities," of the Standard Specifications, the Plans, and these Special Provisions. Where existing facilities to be adjusted are located in traffic areas, said facilities shall be modified to handle traffic loads and retrofitted with traffic covers. Exact locations of survey monuments, etc. shall be field verified by the Contractor at the start of construction and field verified by the Engineer prior to the start of work.

The Town shall be notified seven (7) working days prior to adjusting any facilities to grade. All work shall be done without any interruption to services provided by the facility.

Frames and covers shall be removed, transported, and stored without damage. Any items damaged shall be replaced at the Contractor's expense. Pre-existing damage must be brought to the Engineer's attention prior to commencement of any work. All facilities shall be adjusted to grade within fourteen (14) working days after the final hot mix asphalt overlay has been placed on each street. The covers shall be raised by excavating the frame and cover in a neat concentric circle with a diameter not greater than necessary to loosen and adjust the frame with the cover and the concrete collar.

At the direction of the Engineer, the Contractor shall use quick set concrete for all collars. Class A concrete mix (590 pounds cement per cubic yard concrete) shall be used to fill the void to an elevation 1" to 1.5" below finish grade. After three (3) days of concrete set, a tack coat of undiluted SS1h asphalt emulsion shall be applied to all concrete and vertical surfaces. The hot mix asphalt (HMA) surface course to be applied shall be 1/2", Type A, compacted to a minimum of 95 percent. Asphalt binder shall be PG 64-10. Any facilities that are adjusted to grade, but are not to the satisfaction of the Engineer, shall be removed and re-adjusted within four (4) working days of being notified to do so by the Engineer. All required hot mix asphalt, tack coat and concrete required for raising facilities to grade shall be paid for under this contract item.

Monument boxes in work areas shall be raised or adjusted to the new grade without disturbing the existing monument, or the Contractor shall be responsible for obtaining services of a registered Surveyor to tie out the existing monument, remark, and reset the monument following the raising of the box. The Contractor shall be responsible for filing the appropriate Corner Records as necessary for relocation of the monument and shall provide a copy of all recorded documentation to the Town prior to project acceptance.

New monument boxes, including frames and covers shall be installed to grade around those monuments that do not have existing boxes. Any new monument boxes, frames, and covers needed shall be provided by the Town. All covers shall be stable under traffic.

The Contractor shall clean all concrete, HMA debris, and tack oil off of utility covers caused by the Contractor's operation.

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work in compliance with the Plans, Specifications, and "Existing Facilities," of the Special Provisions, shall be included and paid for in the appropriate bid item price.

Bid Item #2: Adjust Utility to Grade (Revocable) (Ea.)

Bid Item #12: Adjust Inlet to Grade (Ea.)

8.4. Clearing and Grubbing

General

Clearing, grubbing and removal of obstructions shall conform to Section 17.2, "Clearing and Grubbing," of the Standard Specifications, the Plans, and these Special Provisions.

The work consists of removal of bushes, plants, and vegetation indicated on the plans; and removal and disposal or relocation/replacement of all other existing obstructions in the way of the improvements indicated on the Plans, Special Provisions, as directed by the Engineer, or as noted by the Contractor during the pre-bid site visit.

All existing improvements designated to be removed and replaced shall be replaced with like materials to match the existing improvements. Improvements designated to be removed and relocated shall not be damaged during the relocation. Those improvements that are damaged during removal and cannot be relocated will be replaced with like materials to match the existing improvements, at no additional cost to the Town.

All existing trees, bushes, vegetation, or other improvements not specifically identified on the Plans to be removed, reinstalled, or replaced to install new improvements shall remain in their original condition and location undisturbed. The Contractor shall protect trees and shrubs to remain and their root systems from damage. The Contractor shall replace any damaged tree, shrub, or other existing improvement intended to remain at no expense to the Town.

The Contractor, at no cost to the property owner or Town, shall replace any irrigation system that is damaged by the Contractor's operation. Replacement or repair shall occur within three (3) calendar days

after damage has occurred. Liquidated damages will be assessed in the amount of \$1,000 for each calendar day that any sprinkler or irrigation system repair work remains incomplete beyond the three (3) days allowed. Any irrigation lines within the area of new improvements shall be relocated or removed and capped at the right of way line as directed by the Engineer.

Landscaping Obstruction

In the event that there are landscaping obstructions such as ivy, lawn, juniper branches, grass, or other encroaching vegetation, the Contractor shall trim or prune such obstruction only to the extent necessary to conduct the installation of improvements in the public right-of-way. Landscaping or other improvements outside the limits of work shall be protected by the Contractor and shall be replaced in kind if the Contractor's operations damage the existing improvements. If the Contractor fails to comply in providing the necessary replacement as defined, the Engineer may elect to have the Town or contract forces perform all these duties deducting all the expenses incurred from any moneys that are due, or to become due, to the Contractor. By exercising this option, the Contractor is in no way relieved of the responsibilities to perform these duties.

Tree Trimming

If existing trees or shrubs, including median island plantings and private trees, encroach into the public right-of-way and threaten to obstruct the Contractor's operation, the Contractor shall request permission to trim the existing trees or shrubs from the Town Arborist, at least five (5) working days prior to the date of scheduled tree trimming. All tree and shrub trimming must have prior approval of the Town Arborist and shall be performed by a Contractor possessing a C-27 or a D-49 license. If required, obtain Tree Permits from the Parks and Public Works Department. Tree permit fees shall be waived for the Town project. All costs for tree or shrub trimming and proper disposal shall be paid by the Contractor.

A special notice pertaining to the tree trimming shall be delivered to the adjacent home or business at least two working days before the tree is trimmed. The notice shall be reviewed and approved by the Engineer before delivery.

Measurement and Payment

Full compensation for furnishing all labor, material, tools, equipment and all incidentals for doing all other work involved in compliance with the Plans, Specifications, and "Clearing and Grubbing," the Special Provisions, shall be included and paid for in the appropriate bid item price.

Bid Item #3: Clearing and Grubbing (L.S.)

8.5. 8.6 TRAFFIC STRIPES, PAVEMENT MARKINGS, AND MARKERS

General

Traffic stripes (traffic lines) and pavement markings (legends) shall conform to the following: Provisions of Section 84 of the Standard Specifications, the CA MUTCD, the striping tie out plans as generated by the Contractor and approved by the Engineer under Section 10-1.02D, "Pavement Marker, Thermoplastic Marking and Striping Removal," of the Standard Specifications. Traffic stripes and

marking shall be installed as shown on the approved striping tie-out plans or as directed by the Engineer.

All traffic stripes and pavement markings shall be laid out in the field by the Contractor and reviewed and approved by the Engineer five (5) working days prior to any final installation. Any striping and/or marking installed by the Contractor that the Engineer has not pre-approved, and that the Engineer determines have been installed improperly or in the wrong locations, shall be removed and replaced to the satisfaction of the Engineer at the Contractor's sole expense.

Paint for Traffic Stripes

Paint for the traffic stripes, curb painting, and pavement markings shall be Rapid Dry Water Borne paint in accordance with Sections 84, "Markings," of the Standard Specifications and shall be applied in two coats.

Curbs shall be painted at locations shown on the Plans and as directed by the Engineer. Application shall consist of two coats of traffic paint of the appropriate color applied to the face and top of the curb.

Pavement markings shall be installed with stencils belonging to the Contractor that are determined to be identical to the Town's stencils.

The Contractor shall install the first coat of the paint within seven (7) calendar days of the final resurfacing. After fourteen (14) calendar days, the second coat of paint shall be applied after the final resurfacing.

Raised Pavement Markers

Pavement markers shall conform to Section 81, "Miscellaneous Traffic Control Devices," of the Standard Specifications, the CA MUTCD, and these Special Provisions. All non-reflective pavement markers shall be ceramic. Plastic pavement markers shall not be allowed.

Adhesive shall be hot melt bituminous adhesive conforming Section 81, "Miscellaneous Traffic Control Devices," of the Standard Specifications and these Special Provisions.

Markers shall not be placed on new hot mix asphalt surface until the surface has been open to public traffic for a period of not less than seven days when hot melt bituminous adhesive is used, and not less than 14 days when epoxy adhesive is used. Placement of pavement markers shall be completed within three weeks of application of the new resurfacing of the respective roadway.

All pavement markers in place (outside the limits of the work) shall be protected from damage and shall be clean and undamaged after completion of the project. Any damage to the newly placed or existing markers due to the failure of the Contractor to protect the work, and correction of errors, shall be repaired by the Contractor at no additional cost.

Blue reflective (Caltrans Type BB) fire hydrant pavement markers shall be installed conforming to the provisions of the CA MUTCD Section 3B.11, "Raised Pavement Markers," and Figure 3B-102 (CA).

A certificate of compliance shall be furnished as specified in Section 6-2.03C, "Certificates of Compliance," of the Standard Specifications for reflective pavement markers. The certificate of compliance shall also certify that the reflective pavement markers conform to the prequalified testing

and approval of Caltrans, division of Traffic Operations, and where manufactured in accordance with the approved quality control program.

Thermoplastic Traffic Stripe and Pavement Marking

Thermoplastic traffic stripes (traffic lines) and pavement markings shall be applied in conformance with Section 84, "Markings," of the Standard Specifications and these Special Provisions.

Thermoplastic material shall be free of lead and chromium and shall conform to the requirements in State Specification PTH 02ALKYD or PTH-02SPRAY of the Standard Specifications.

Retroreflectivity of the thermoplastic traffic stripes and pavement markings shall conform to the requirements in ASTM D6359 99. White thermoplastic traffic stripes and pavement markings shall have a minimum initial retroreflectivity of 250 mc/m²/lux. Yellow thermoplastic traffic stripes and pavement markings shall have a minimum initial retroreflectivity of 150 mcd/m²/lux.

The color for green back symbols shall meet FHWA specifications for "green."

Where striping joins existing striping, as shown on the plans, the Contractor shall begin and end the transition from the existing striping pattern into or from the new striping pattern a sufficient distance to ensure continuity of the striping pattern.

Payment for crosswalks shall be measured from the edge of curb or edge of gutter, whichever is less, in linear feet, and shall include the ladder striping and no additional compensation shall be allowed therefore.

Thermoplastic traffic stripes and pavement markings shall be free of runs, bubbles, craters, drag luxmarks, stretch marks, and debris. Thermoplastic shall be extruded and placed in one coat and shall be placed five days after the final surfacing. Sprayable thermoplastic is not allowed after the installation of surface treatments (slurry seal, chip seal, rubber chip seal, or microsurfacing). Longitudinal limit lines shall be white and 12 inches in width. All pavement striping and markings shall be white unless otherwise indicated.

Application

Use preheaters with mixers having 360 degree rotation to preheat the thermoplastic material. Apply the thermoplastic in a single uniform layer by extrusion method. Completely coat and fill voids in the pavement surface with the thermoplastic.

Extruded Thermoplastic

Apply extruded thermoplastic at a temperature from 400 to 425°F, unless a different temperature is instructed by the manufacturer. Apply extruded thermoplastic for a traffic stripe at a rate of at least 0.20 lb./ft. of 4-inch wide solid stripe. The applied thermoplastic traffic stripe must be at least 0.060 inch thick. An applied thermoplastic pavement marking must be from 0.100 to 0.150 inch thick. Apply glass beads to the surface of the molten thermoplastic at a rate of at least 8 lb./100 sq. ft.

Measurement and Payment

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work in compliance with the Plans, Specifications, and Section 10-10, "Traffic Stripes, Pavement Markings, and Markers," of the Special Provisions shall be measured and paid for in the appropriate bid item listed below:

Bid Item #11: Paint Red Curb (Revocable) (L.F.)