

**CITY OF WHEATLAND  
SHORT FORM PUBLIC WORKS CONSTRUCTION CONTRACT**

Name of Project	<b>Corp Yard Sinkhole Repair</b>
Contractor Name, Address and Capacity (e.g., corporation, partnership)	B K CUSTOM CONCRETE 4164 MARKLEY RD YUBA CITY, CA 95993 (530) 635-7046 <a href="mailto:bksr_9@hotmail.com">bksr_9@hotmail.com</a> ATTN: Brandon Kesterson, Owner
List and Title of Contract Exhibits	Exhibit A – Bid Proposal Exhibit B – Invitation to Bid
Type of Required California Contractor’s License Classification	C-8 Concrete
Total Contract Price	Phase 1 - \$29,226.00 Phase 2 – Negotiated Change Order Not to Exceed \$53,105
Time of Completion/Contract Time	10-calendar days from Notice to Proceed
Daily Liquidated Damages Amount (insert zero if none)	\$200/calendar day
City Representative Name, Title, and Address	Dane Schilling, City Engineer dschilling@wheatland.ca.gov
Date of Contract	November 12, 2024

This contract is made by and between City of Wheatland and the Contractor named above, who agree as follows:

1. **Scope of Work.** This Public Works Construction Contract, the Contract exhibit(s) listed above, approved Change Orders, and, if applicable, the notice inviting bids, addenda, Contractor’s bid and bid forms constitute the “Contract” between the parties. For purposes of this Contract, the “Work” shall mean the scope of work as described in the exhibit(s).

2. **Time of Completion.** The Work shall be completed by the deadline stated in the exhibit(s) or, if no deadline is stated in the exhibit(s), Contractor shall perform the Work diligently and as expeditiously as possible consistent with good and safe construction practices and the orderly progress of the Work. The parties agree that time is of the essence for the performance of this Contract.

3. Contractor's Performance. Contractor shall construct, install, perform and do the Work, and shall furnish, provide and pay for all labor, equipment, materials, tools, supplies, transportation, permits, sales and taxes, and shop drawings necessary or appropriate to complete the Work. Contractor shall perform in the Work in a good and workmanlike manner, and such Work shall be done to the approval and satisfaction of City.

4. Contract Price and Payments.

(a) If Contractor performs the Work in accordance with this Contract and to the satisfaction of City, City shall pay Contractor in the amount and manner as set forth in the exhibit(s); however, the total Contract price shall not exceed the sum stated above, unless otherwise agreed to in writing by City. No payment, including all progress payments and the final payment, shall be made to Contractor in excess of 95% of the percentage of Work actually completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, City. The five percent not paid shall be withheld by City until final completion and acceptance of the Work. However, in lieu of withholding of money, and in accordance with the provisions of California Public Contract Code section 22300, Contractor may substitute securities to ensure performance under the Contract.

(b) If payment is to be made by progress payments, then, in accordance with California Public Contract Code section 20104.50, a written payment request from Contractor shall be reviewed by City as soon as practicable in order to determine whether it is proper. If City determines it not to be a proper payment request suitable for payment, then City shall return it to Contractor with a written explanation of the deficiencies as soon as practicable, but not later than seven days after receipt of the payment request. If City determines the payment request to be properly submitted and undisputed, the City shall make the payment to Contractor within 30 days after receipt of the payment request. If City does not pay a properly submitted and undisputed payment request within this 30-day period, then City shall pay interest on the overdue amount to Contractor at the legal rate set forth at California Code of Civil Procedure section 685.010. This subsection shall not apply if City funds are not available for payment of the payment request or if payment is delayed due to an audit inquiry by the financial officer of City.

(c) No progress or final payment shall be considered or construed to be an approval or acceptance of any Work, materials or equipment, or a waiver of any breach or default. Estimated amounts and values of Work done and materials and equipment incorporated into the Work will be conformed with actual amounts and values as they become available in subsequent progress payments and the final payment. All payments will be subject to correction in subsequent progress payments and the final payment.

5. Compliance with Laws. Contractor shall give all notices and comply with all federal, state and local laws, statutes, regulations and ordinances applicable to the performance of the Work. Contractor is responsible for the safety of its workers and Contractor shall comply with, and require its workers to comply with, all applicable federal and state worker and job site safety-related laws and regulations, including, but not limited to, applicable federal Department of Labor, Occupational Safety and Health Administration ("OSHA") regulations and California Department of Industrial Relations (including the Division of Occupational Safety and Health and Occupational Safety and Health Standards Board ("Cal/OSHA")) regulations and safety orders.

Contractor shall promptly notify City's Representative in writing of any specification at variance therewith and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to City's Representative, it shall bear all costs arising therefrom.

6. Permits and Licenses. Permits, licenses, and easements necessary for the performance of the Work shall be obtained and paid for by Contractor, unless otherwise provided in the exhibit(s). Contractor must hold the current and valid type of California contractor's license classification described above for the duration of the Work.

7. Certificates of Reported Compliance. This Contract is subject to the California Air Resources Board Off-Road Diesel Regulation (Title 13 CCR § 2449). In order to be eligible to perform the Work under this Contract, Contractor must submit to City copies of valid Certificates of Reported Compliance, as described in section 2449(n), for the fleet selected to perform work under this Contract. If applicable, subcontractors must submit copies of valid Certificates of Reported Compliance, as well. If Contractor does not provide said Certificates, Contractor may not perform work under this Contract.

The California Air Resources Board Off-Road Diesel Regulation applies to all self-propelled offroad diesel vehicles with 25 horsepower or greater and most two-engine vehicles (except on-road two-engine sweepers). This includes vehicles that are rented or leased (rental or leased fleets)

8. Bonds. Promptly upon execution of this Contract and prior to the commencement of any Work, Contractor shall obtain at its sole cost and expense and provide to City a performance bond and payment bond each in the amount of 100% of the amount of this Contract. The bonds must be issued by a surety admitted in California and be in a form acceptable to City. The bonds must comply with California Civil Code sections 9550 and 9554 and applicable provisions of the California Bond and Undertaking Law (Code Civ. Proc. § 995.010 et seq.).

9. Authority of City and City's Representative.

(a) The City's representative listed above is the representative of the City for purposes of this Contract and has full authority to interpret the Contract, to conduct the construction review and inspection of Contractor's performance, and to decide questions which arise during the course of the Work. His/her decisions on these matters shall be final and conclusive. City's Representative has the authority to reject all Work and materials which do not conform to the Contract, and has the authority to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Contract. City's Representative's right and authority is limited to rejection of unsatisfactory Work or methods. City and the City's Representative do not bear any responsibility for Contractor's safety practices or procedures. Any order given by City's Representative, not otherwise required by the Contract to be in writing shall, on request of Contractor, be given or confirmed by City's Representative in writing. Whenever Work, methods of procedure, or any other matters are made subject to direction or approval of City, such direction or approval will be given by City's Representative.

(b) Except as provided elsewhere in the Contract, neither City nor City's Representative will be responsible for or have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Except as provided elsewhere in the Contract, neither City nor City's representative will be responsible for or have control or charge over the acts or omissions of Contractor, or any of their subcontractors, agents or employees, or any other persons performing any of the Work. Any general control of the Work exercised by City or its authorized representatives shall not make Contractor an agent of City, and the liability of Contractor for all damages to persons and/or to public or private property arising from Contractor's execution of the Work shall not be lessened because of such general control.

10. Contractor's Understanding. Contractor acknowledges that it has, by careful investigation and inspection, satisfied itself as to the nature and location of the job site; the ground, character, quality and quantity of the materials and conditions to be encountered, including subsoil conditions, if applicable; the character and amount of labor, equipment, supplies and materials needed preliminary to and during the performance of the Work; and all other matters which can in any way affect the Work under this Contract. Contractor further acknowledges that neither City nor City's Representative have made any representations whatsoever concerning job site conditions, except for such representations that may have been made in writing in this Contract.

11. Subcontractors. All subcontractors and suppliers engaged in work will be considered as employees of Contractor, and Contractor shall be held responsible for their work, which shall be subject to the provisions of the Contract. Contractor will provide the following information: (a) the name and the, location of the place of business, and California contractor's license number of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, and of each subcontractor who, under subcontract to Contractor, is to specifically fabricate and install or provide a portion of the work or improvement according to the Contract, in any amount in excess of 1/2 of 1 percent of the Contract amount. Contractor shall ensure that all subcontractors employed on the work comply with all applicable laws and regulations, including payment of prevailing wages, employment of apprentices, and preparation and submission of accurate and complete payrolls. Contractor shall be fully responsible to City for the acts or omissions of its subcontractors and of the persons either directly or indirectly employed by them. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and City. Each subcontract shall contain a suitable provision for the suspension or termination thereof with or without cause. If a legal action, including arbitration and litigation, against City is initiated by a subcontractor or supplier, Contractor shall reimburse City for the amount of legal, engineering and all other expenses incurred by City in defending itself in said action. City and City's Representative reserve the right to approve all subcontractors.

Contractor shall not utilize, or allow work by, any subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to California Labor Code section 1777.1 or 1777.7. (See California Public Contract Code section 6109.) The California Division of Labor Standards Enforcement publishes a list of debarred contractors and subcontractors on the Internet at [www.dir.ca.gov/DLSE/debar.html](http://www.dir.ca.gov/DLSE/debar.html).

12. Changes in the Work. City may, at any time, by written change order make changes in the Work, or extend the time to complete the Work, as deemed necessary by City. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Contract, there shall be an equitable adjustment in the Contract price. The price adjustment shall be determined by one of the following methods in the order of precedence listed:

(a) Based on the unit prices contained in section 4, if applicable.

(b) Mutually agreed-upon lump sum or unit price adjustment.

(c) Contractor's actual cost of labor (wages and benefits), materials (actual purchase price, sales tax, freight & delivery) and equipment/tools (at actual or fair/prevaling rental rates) directly engaged in the performance of the extra work plus 15% mark-up for overhead and profit. For price adjustments under this section, Contractor shall provide to City an itemized breakdown of the quantities and prices used in the extra work, and it shall make available all source documents, including payroll records, invoices, purchase orders, contracts and lease agreements.

13. Guarantee.

(a) Contractor unconditionally guarantees all materials and workmanship furnished under this Contract, and agrees to replace at its sole cost and expense, and to the satisfaction of City, any and all materials which may be defective or improperly installed. Contractor shall repair or replace to the satisfaction of City any or all such Work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other Work which may be damaged or displaced in so doing. This guarantee shall remain in effect for one year from the date of City's acceptance of the Work. The City shall have the right to call for such inspection or inspections of the work before the end of the one-year guarantee period and Contractor shall attend and participate in such inspection(s) upon request of City. This guarantee does not excuse Contractor for any other liability related to defective Work discovered after the guarantee period. Contractor shall transfer to City all manufacturer and supplier warranties relating to the Work, if any, upon completion of the Work and prior to final payment. Any products/completed operations insurance coverage shall be maintained after completion of the project for the full guarantee period.

(b) In the event of failure to comply with the above stated conditions within a reasonable time, City may have the defect repaired and made good at the expense of Contractor, which shall pay the costs and charges for such repair immediately upon demand, including any reasonable management and administrative costs, and engineering, legal and other consultant fees incurred by City in enforcing this guarantee

14. Suspension of Work. City may suspend the Work wholly or in part, for such period as City may deem necessary, due to unsuitable weather or to any other conditions City considers unfavorable for the suitable performance of the Work, including the improper performance of the Work by Contractor. Contractor shall immediately comply with such written order of City to suspend the Work wholly or in part and shall be paid for the Work performed to the date of suspension, except for improperly performed Work. The suspended Work shall be resumed only when ordered by City.

15. Termination.

(a) This Contract may be terminated with or without cause at any time by City by giving 10 days' advance written notice to Contractor. In the event of such termination, Contractor shall be compensated for actual Work performed to the date of termination as calculated by City based on the Contract price and payment provisions above.

(b) If City terminates the Contract because of Contractor's failure to do the Work with such diligence as will ensure the completion of the Work within the time specified in the Contract, then City may take over the Work and pursue the same to completion by using another contractor or any other method City deems expedient. In this event, City may also take possession and control of, and utilize in completing the Work, any and all materials, supplies, tools and equipment delivered to the site of the Work by Contractor or by its suppliers or subcontractors. The materials, supplies, tools and equipment remaining after completion of the Work shall be returned to Contractor.

16. Prevailing Wages. Contractor agrees to pay all workers employed on this Work not less than the general prevailing rate of per diem wages for Work of a similar character in the locality of City, and not less than the general rate of per diem wages for holiday and overtime work, as established pursuant to the California Labor Code (in particular sections 1770-1780) and applicable regulations and orders. A copy of the applicable prevailing rate of per diem wages is available to the contractor at the administrative offices of City. Contractor shall obtain and post a copy of such prevailing wage rates at the job site. Contractor shall also comply with the provisions of California Labor Code section 1775, including provisions which require Contractor to (a) forfeit as penalty to City not more than \$200 for each calendar day or portion thereof for each worker (whether employed by Contractor or any subcontractor) paid less than the applicable prevailing wage rates for any work done under this Contract in violation of the provisions of the California Labor Code, and (b) pay to each worker the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which said worker was paid less than the prevailing wage.

17. Labor Nondiscrimination. In accordance with California Labor Code section 1735, throughout the performance of the Contract, Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age (over 40), or sexual orientation (as those discrimination bases are defined in California Government Code sections 12926 and 12926.1) of such persons, except as provided in California Government Code section 12940. Any contractor violating this nondiscrimination provision shall be subject to penalties that may be imposed pursuant to Division 2, Part 7, Chapter 1 of the California Labor Code.

18. Eight-Hour Day Limitation.

(a) Contractor agrees that 8 hours labor shall constitute a day's work, and no worker, in the employ of the Contractor, or any subcontractor, doing or contracting to do any part of the Work under this Contract, shall be required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week; provided that subject to California Labor

Code section 1815, a worker may perform work in excess of 8 hours per day or 40 hours per week at not less than one and one-half times the basic rate of pay.

(b) Except as provided above for overtime, Contractor shall forfeit as a penalty to City the sum of \$25 for each worker employed in the execution of this Contract by it or by any subcontractor under it for each calendar day during which such worker is required or permitted to Work more than 8 hours in any one day and 40 hours in any one calendar week in violation of California Labor Code sections 1810 through 1815.

19. Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record 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, and shall make such payroll record available for inspection, in accordance with the requirements of California Labor Code section 1776. Contractor shall be responsible to ensure compliance with section 1776. Failure to comply with that section may result in the Labor Commissioner's assessment of a penalty of \$100 per day per worker.

20. Employment of Apprentices. Contractor shall comply with, and take such actions as necessary to effectuate, the apprentice employment requirements as set forth at California Labor Code sections 1777.5, 1777.6 and 1777.7.

21. Character of Worker. If any employee of Contractor or any of its subcontractors shall be incompetent or act in a disorderly or improper manner, such employee or subcontractor shall be removed from the Work immediately, and such person or subcontractor shall not again be employed on the Work. Such discharge shall not be the basis for any claim for compensation or damages against City, or any of its officers or agents.

22. Superintendence. Contractor shall designate in writing before starting Work an individual as authorized representative who shall have the authority to represent and act for Contractor. This authorized representative shall be present at the Work site at all times while Work is actually in progress. When Work is not in progress and during periods of Work suspension, arrangements acceptable to City's Representative shall be made for any emergency work that may be required.

23. Inspection and Testing of Work.

(a) Unless otherwise provided, all equipment, supplies, materials, and Work shall be subject to inspection and testing by City's Representative. City's Representative will observe the progress and quality of the Work and determine, in general, if the Work is proceeding in accordance with the Contract. City's Representative shall not be required to make comprehensive or continuous inspections to check the quality of the Work, and he or she shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. Observations, inspections or testing by City's Representative shall not relieve Contractor of its obligation to conduct comprehensive inspections of the Work and to furnish proper materials, labor, equipment and tools, and perform acceptable Work, and to provide adequate safety precautions, in conformity with the Contract.

(b) Contractor shall provide access to City's Representative and other agents of City, and agents of the federal, state, or local governments at all reasonable hours for inspection and testing to ascertain compliance with the Contract and applicable laws and regulations. Contractor shall cooperate in providing such access, and shall, upon request by City's Representative, promptly provide safe and convenient facilities, labor and materials reasonably needed by City's Representative for performing all inspection and tests.

(c) If, after any inspection or testing by City's Representative, City finds any of the Work to be unacceptable, defective or nonconforming, then Contractor at its sole cost and expense shall replace or repair the Work to the satisfaction of City's Representative. If any Work required to be tested or inspected was installed, covered, or buried without inspection or testing, then, upon request by City's Representative, Contractor shall at its sole cost and expense remove or uncover the Work such that it may be inspected or tested, and replace the Work after completion of the inspection or testing. Upon failure of Contractor to comply with any order of City's Representative made under this section, City may cause the unacceptable, defective or nonconforming Work to be remedied, removed, or replaced, and may deduct the costs therefor from any monies due or to become due Contractor.

24. Trade Names and Alternatives. For convenience in designation in the Contract, certain articles or materials to be incorporated in the Work may be designated under a trade name or the name of a manufacturer. The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, so long as Contractor shows to the satisfaction of City's Representative that the acceptable quality and suitability of the alternative(s).

25. Protection of Work and Safety.

(a) Contractor shall be responsible for the care of all Work until its completion and final acceptance by City; and it shall at its own expense replace damaged or lost materials or supplies and repair damaged parts of the Work.

(b) City's Representative's construction review and inspection of Contractor's performance shall not include any review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding or safety measures, in, on, or near the job site.

(c) Contractor shall be solely and completely responsible for the conditions of the job site, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety procedures and practices shall conform to all applicable federal, state, and local laws, ordinances, and codes. Contractor shall carefully instruct all personnel as to potential dangers and shall provide such necessary safety equipment and instruction as may be necessary to prevent injury to personnel and damage to property. Contractor shall provide and maintain, in accordance with California Labor Code section 6708, OSHA and Cal/OSHA requirements, adequate emergency first aid treatment for its employees and anyone else who may be injured in connection with the work.

(d) Contractor shall have an Injury/Illness Prevention Program (IIPP) in place to protect the safety of its employees and ensure that its subcontractors also have an IIPP or comply



with Contractor's program. The Contractor's IIPP shall comply with and be at least as effective as the requirements of section 3203 of Title 8 of the California Code of Regulations. The Contractor and subcontractors must implement all requirements of the Injury and Illness Prevention Program regulation, unless they can demonstrate that they are exempt from certain specific provisions in the regulation. The Contractor shall submit a copy of its IIPP to the City prior to any work being performed on City property.

(e) If the Work includes the construction, alteration, improvement, or maintenance of electric power generation, control, transformation, transmission or distribution lines or equipment within the meaning of Code of Federal Regulations title 29, section 1910.269 or 1926.950, then the Contractor will implement and comply with the requirements of the "contract employer" as described and set forth in sections 1910.269 and 1926.950, including, but not limited to, the obligations to properly train the Contractor workers on safety-related work practices and procedures, exchange information with the City concerning unique hazardous conditions presented by the Work, instruct the Contractor workers about the hazardous conditions relevant to the Work, and coordinate with the City on safety-related work rules and procedures. The Contractor also shall be responsible for transmitting safety-related information under sections 1910.269 and 1926.950 with any subcontractors retained by it to perform electrical-related Work under the Contract.

26. Protection of Public and Property.

(a) Contractor shall take all necessary or appropriate precautions to prevent damage to all existing improvements, including above ground and underground utilities, pipelines, conduits, trees, shrubbery, fences, signs, mailboxes, driveways, sidewalks, gutters, streets, parking lots or other pavement, levees or embankments, survey markers and monuments, buildings, structures, City's property, adjacent property, and any other improvements or facilities within or adjacent to the job site. If any such improvement or property is damaged or destroyed by reason of Contractor's operations, it shall be replaced or restored, at Contractor's sole cost and expense, to a condition at least as good as that prior to the start of Contractor's performance under this Contract.

(b) Contractor shall adopt all practical means to minimize interference to traffic and public inconvenience, discomfort or damage from the Work. All obstructions to traffic shall be guarded by barriers illuminated at night. For any Work on, adjacent to, or interfering with any street, the conditions and limitations applicable to such Work shall be determined by those public agencies or other entities responsible for maintenance of the affected street. Contractor shall determine the nature and extent of all such requirements, and shall comply with all permit and other requirements. As required at any street crossing, Contractor shall provide all necessary flag persons, guardrails, barricades, signals, warning signs and lighting to provide for the safety of existing roads and detours. Immediately after the need for temporary detours ceases, or when directed, Contractor shall remove such detours and perform all necessary cleanup work, including replacement of fences, removal of pavement, necessary replacement of existing roadway appurtenances, grading, soil stabilization and dust control measures.

27. Clean-Up. During the progress of the Work, Contractor shall maintain the job site and related structures, grounds and equipment in a clean, orderly condition and free from unsightly accumulation of rubbish. Upon completion of Work and before final payment, Contractor shall at

its own cost and expense clean-up and remove from the vicinity of the Work all rubbish, debris, trash, unused materials and supplies, concrete forms, and temporary bridging and other like materials, belonging to it or used under its direction during the construction of the Work. Where the construction has crossed yards or driveways, they shall be restored by Contractor to the complete satisfaction of City's Representative, at Contractor's sole expense.

28. Water Pollution. Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, and canals from pollution with fuels, oils, bitumens, calcium chloride, and other harmful materials and shall conduct and schedule its operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, and canals. Care shall be exercised to preserve vegetation beyond the limits of construction. Contractor shall comply with California Fish and Game Code section 5650 and all other applicable statutes and regulations relating to the prevention and abatement of water pollution. If the Work is subject to the NPDES general permit for stormwater discharges from construction activities, Contractor will comply with all terms and conditions of any applicable special condition, specification or addendum issued by City related to implementation of the Storm Water Pollution Prevention Plan for the Work.

29. Underground Work. If the Work includes excavation and/or trenching deeper than four feet underground, then the following provisions shall apply:

(a) Protection of Underground Utilities. Prior to conducting any excavation or trenching, Contractor shall contact the appropriate regional notification center as required by California Government Code sections 4216 and following. In accordance with California Government Code section 4215, City shall be responsible for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the project site and not shown on the plans and drawings. Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities not indicated on the plans and drawings with reasonable accuracy, and for the equipment on the project necessarily idled during such work; provided that Contractor shall first notify City before commencing work on locating, repairing damage to, removing or relocating the utilities. Contractor shall not be assessed liquidated damages for delay in completion of the project, when the delay was caused by the failure of City or the owner of the utility to provide for removal or relocation of the utility facilities not shown on the plans and drawings.

(b) Sheeting and Shoring Plan. If the total amount of the Contract exceeds \$25,000 and the Work involves the excavation of any trench or trenches five feet or more in depth, then, in accordance with California Labor Code section 6705, Contractor shall submit to City for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any such trench or trenches. The plan shall comply with applicable United States Department of Labor regulations (29 C.F.R. 1926) and OSHA and Cal/OSHA construction safety orders and shoring system standards, or be prepared by a registered civil or structural engineer who certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the construction safety orders and shoring system standards.

(c) Unusual Underground Conditions. In accordance with California Public Contract Code section 7104, the following provisions shall apply to any work that involves digging trenches or other excavations:

(i) If, during any such digging or excavation, Contractor discovers (a) material Contractor believes may be material that is hazardous waste, as defined in California Health & Safety Code section 25117, that is required to be removed to a Class I, II or III disposal site, (b) subsurface or latent physical conditions at the site differing from those indicated, or (c) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract, then Contractor shall promptly notify City's Representative in writing and shall not disturb the area of the subject digging or excavation until notified by City's Representative.

(ii) Upon receipt of any notice pursuant to the foregoing subsection, City's Representative shall promptly investigate the conditions, and if he or she finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of the Work, or any part of the Work, it shall issue a change order pursuant to this Contract.

(iii) If there is a dispute between City and Contractor over whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused for the scheduled completion date, but shall proceed with all work to be performed under the Contract. Contractor shall retain any and all rights provided by this Contract or by law that pertain to the resolution of disputes and protests between the parties.

30. Hazardous Materials; Hazard Communication.

(a) Proposition 65 and the California Health and Safety Code require businesses to provide warnings prior to exposing individuals to materials listed by the Governor as chemicals "known to cause cancer or reproductive toxicity." City may use chemicals on the Governor's list at many of its facilities. In addition, many of these chemicals are present at non-City-owned facilities and locations. Accordingly, in performing the Work under this Contract, Contractor, its employees, agents, and subcontractors may be exposed to chemicals on the Governor's list. Except as provided in subsection (b), Contractor is responsible for notifying its employees, agents, and subcontractors that work performed hereunder may result in exposures to chemicals on the Governor's list.

(b) Before starting work, Contractor shall have a written Hazard Communication Program ("HCP") in place that complies with the requirements of section 5194 of Title 8 of the California Code of Regulations, including the requirements of 8 C.C.R. section 5194(e). The information in Contractor's HCP must include the methods by which Contractor shall communicate to City which hazardous substances it will use and store on the job site(s) to which City's and Contractor's employees and subcontractors may be exposed. Contractor shall submit its HCP to City at the same time as submittal of its initial project schedules or other time designated by City. Contractor will provide copies of safety data sheets ("SDS") for all hazardous substances brought onto and used or stored on the job site(s). Contractor also will ensure that all

hazardous substances are marked with Proposition 65 and any other visible warning labels as required by law. Whenever possible, Contractor shall provide SDS for all hazardous substances to City prior to bringing a hazardous substance onto a job site, but will provide all SDS by no later than the time the hazardous substance is physically brought onto the site. City will communicate Contractor's HCP and SDS information to City's employees who work on or will enter the job site. City will provide Contractor with a copy of City's HCP and SDS information specific to City operations on the job site. Contractor shall, in turn, convey this information to its employees and subcontractors. During the course of the work, Contractor will keep copies of both its and City's HCP, SDS and other relevant information at Contractor's job site office.

31. Contractor's License Notice. Statement required by California Business & Professions Code section 7030: "Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826."

32. Indemnification. To the fullest extent permitted by law, Contractor shall protect, defend, indemnify and hold harmless City and, if applicable, City's Representative, and their respective officers, directors, agents, employees, volunteers, representatives, boards, and consultants from and against all penalties and fines imposed by law and all loss, claim, cause of action, demand, suit, judgment, cost, damage, expense, and liability (including but not limited to court or arbitration costs and reasonable attorneys' and expert witness fees) resulting from injury to or death of persons, including without limitation employees of the City, City's Representative and Contractor, or damage to or loss of property, caused by, arising out of or in any way connected with the Contractor's or its subcontractors' or suppliers' performance, operations or activities under this Contract, except to the extent the sole negligence, active negligence or willful misconduct of an indemnified party proximately causes the loss, claim, demand, cost, suit, judgment, penalty, fine, cause of action, damage, expense, or liability.

(a) Contractor's duty to defend is a separate and distinct obligation from Contractor's duty to indemnify. Upon the request of an indemnified party hereunder, Contractor shall defend any suit asserting a claim covered by this indemnity and shall pay any costs and expenses that may be incurred by an indemnified party in enforcing this indemnity. Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the City and, if applicable, City's Representative, and their respective officers, directors, agents, employees, volunteers, representatives, boards, and consultants, immediately upon tender to Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability has been established. The obligation to defend extends through final judgment, including exhaustion of any appeals. In all cases, City shall have the right to approve counsel selected by Contractor in the defense of any legal action or with respect to any claim, which approval shall not be unreasonably withheld. In addition, the indemnified party shall have the right to participate in and be represented by counsel of its own choice and at its own expense in any legal action or with respect to any claim.

(b) In any and all claims against the City or City's Representative, and each of their officers, directors, employees and agents by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable under Workers' Compensation statutes, disability benefit statutes or other employee benefit statutes.

(c) Neither termination of this Contract, completion of the acts to be performed under this Contract, nor City's Representative's approval or City's acceptance of the work shall release Contractor from its obligations to indemnify and defend City and City's Representative, and their respective officers, directors, agents, employees, volunteers, representatives, boards, and consultants.

(d) Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Contract does not relieve Contractor from liability under this indemnification provision. The obligations of this section shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

33. Insurance.

(a) The Contractor shall procure and maintain for the duration of the Contract, and for five years thereafter, the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

(i) General Liability - Commercial General Liability (CGL) - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least five million dollars (\$5,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to City) or the general aggregate limit shall be twice the required occurrence limit.

(ii) Automobile Liability - Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) with limit of five million dollars (\$5,000,000) for bodily injury and property damage each accident.

(iii) Workers' Compensation Insurance - The Contractor shall provide workers' compensation coverage as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

(iv) Builder's Risk – (Course of Construction) - insurance utilizing an "All Risk" (Special Perils) coverage form with limits equal to the completed value of the project and no coinsurance penalty provision.

The above minimum insurance coverage limits can be met through provision of umbrella or excess policy insurance coverage consistent with the provisions of this section.

(b) If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum of insurance and coverage shall be available to the City. Furthermore, the above minimum insurance coverage limits can be met through provision of umbrella or excess policy insurance coverage consistent with the provisions of this section 33.

(c) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees and volunteers; or Contractor shall procure a bond or other security guaranteeing payment of losses and related investigations, claim administration and defense fees, costs and expenses. All policies that include a self-insured retention shall include a provision that payments of defense costs and damages (for bodily injury, property damage, personal injury or any other coverages included in the policy) by any party, including additional insureds and insurers, shall satisfy the self-insured retention limits.

(d) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) Waiver of Subrogation (also known as Transfer of Rights of Recovery Against Others to Us): The Contractor hereby agrees to waive rights of subrogation to obtain endorsement necessary to affect this waiver of subrogation in favor of the City, its directors, officers, employees, and authorized volunteers, for losses paid under the terms of this coverage which arise from work performed by the Named Insured for the City; this provision applies regardless of whether or not the City has received a waiver of subrogation from the insurer.

(ii) City, and its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor, products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents or volunteers. The additional insured coverage or endorsement shall comply with California Insurance Code section 11580.04.

(iii) For any claims related to this project, Contractor's general and automobile liability coverage shall be primary insurance as respects City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess to Contractor's insurance and shall not contribute with it.

(iv) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its officers, officials, employees, agents or volunteers.

(v) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(vi) Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after 30 days' prior written notice by U.S. mail has been given to City, or after 10 days' written notice in the case of cancellation for non-payment of premium.

(e) Course of construction policies shall contain, or be endorsed to contain, the following provisions: (a) City shall be named as loss payee; and (b) the insurer shall waive all rights of subrogation against City.

(f) Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII or equivalent and that are authorized to do business in California, unless otherwise approved by City. In the case of Workers' Compensation and Employer's Liability insurance, coverage provided by the California State Compensation Insurance Fund is acceptable.

(g) Before commencing work, Contractor shall provide to City the following proof of insurance: (a) certificate(s) of insurance on ACORD Form 25-S (or insurer's equivalent) evidencing the required insurance coverages; and (b) endorsement(s) on ISO Form CG 20 10 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf of the insurer(s) and certifying the additional insured coverages, or equivalent additional insured blanket endorsement. City reserves the right to require complete copies of all required insurance policies and/or endorsements affecting required insurance coverage at any time.

(h) Contractor shall include all actions and activities of its subcontractors as insureds under its policies, or shall require each subcontractor to provide insurance coverage consistent with the foregoing and to furnish separate endorsements or certificates to City. All coverages for subcontractors shall be subject to all of the requirements stated in this section.

(i) Contractor shall maintain all required insurance coverages for the period provided in this section. If any of the required coverages expire during the coverage period, Contractor shall obtain renewal or replacement coverages and deliver certificates for the renewed or replacement coverages and any required endorsements to City at least 10 days before the expiration date of the existing coverage.

(j) Any products/completed operations insurance coverage shall be maintained after completion of the Work for the full guarantee period.

(k) The requirements as to the types, limits, and City's approval of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Contract.

(l) In addition to any other remedy City may have, if Contractor or any of its subcontractors fails to maintain the insurance coverage as required in this section, City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and City may deduct the cost of such insurance from any amounts due or which may become due Contractor under this Contract.

(m) Contractor shall execute and file with City the attached Contractor's Workers' Compensation Certificate in accordance with California Labor Code section 1861.

34. Final Acceptance and Date of Completion.

(a) Whenever Contractor shall deem all Work under this Contract to have been completed, it shall so notify City's Representative in writing, and City's Representative or other City representative shall promptly ascertain whether the Work has been satisfactorily completed and, if not, shall advise Contractor in writing of specific defects and any additional Work required.

(b) Neither the final payment nor any part of the retained percentage shall become due until Contractor, if required, shall deliver to City, a complete release of all liens and claims arising out of this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien or claim could be filed; but Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to City, to indemnify the City against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, Contractor shall refund to City all monies that the latter may be compelled to pay in discharging such a lien, or claim, including all costs and reasonable attorneys' fees.

(c) When all the provisions of the Contract have been fully complied with to the satisfaction of City, City will accept the Work in writing and make the final payment to Contractor. As a condition of receiving the final payment, Contractor must execute and deliver to City, as appropriate, a Conditional Waiver and Release Upon Final Payment or Unconditional Waiver and Release Upon Final Payment in the form provided in Civil Code sections 8136 or 8138, respectively.

(d) Except for any sum required to be withheld by law or allowed to be held under this Contract, the 5% retention shall be paid 35 days after City's acceptance of the Work. In accordance with California Public Contract Code section 7107(c), in the event of a dispute between the parties, City may withhold from the final payment to Contractor an amount not to exceed 150% of the disputed amount.

35. Right to Withhold Payments.

(a) In addition to all other rights and remedies of City provided by law and this Contract, City may withhold the whole or any part of any progress or final payment to such extent as may reasonably be necessary to protect City from loss on account of: (a) unacceptable, defective or nonconforming Work not remedied; (b) claims or liens filed or reasonable evidence indicating probable filing of claims or liens including, but not limited to, claims under sections 1775, 1776 and 1777.7 of the California Labor Code or the public works stop notice provisions in the California Civil Code; (c) failure of Contractor to make payments properly for labor, materials,



equipment, or other facilities, or to subcontractors and/or suppliers; (d) a reasonable doubt that the Work can be completed for the balance then unearned; (e) failure of Contractor to clean up the job site, repair or replace damaged or affected improvements or property; or (f) damage to job site, completed Work, or other real or personal property.

(b) Whenever City withholds any monies pursuant to this paragraph, written notice of the amount withheld and the reasons for the withholding will be given to Contractor. After Contractor has corrected the enumerated deficiencies to the satisfaction of City, City will promptly pay to Contractor the amount so withheld. When City withholds monies to protect City against claims under the public works stop payment notice provisions of the California Civil Code, City may at its discretion permit Contractor to deliver a surety bond in terms and amount satisfactory to City, indemnifying City against any loss or expense, and upon acceptance thereof by City, City shall release to Contractor monies so withheld.

36. State Audit Contingency. Contractor acknowledges that this Contract, and performance and payments under this Contract, are subject to examination and audit by the State Auditor General for three years following final payment under this Contract pursuant to California Government Code section 8546.7.

37. Liquidated Damages. If Contractor does not complete the Work, as determined by City, before the expiration of the Contract time limit, or within any time extension granted by City, then City will sustain damage, and that it may be impracticable to determine the actual amount of damage by reason of the delay. The parties therefore agree that Contractor shall pay City as damages the daily liquidated damages amount stated above for each and every day's delay in finishing the Work beyond the Work completion deadline. The parties agree that this liquidated damages provision is reasonable under the circumstances existing at the time the Contract was made. City shall have the right to deduct the amount of liquidated damages from any money due or to become due Contractor.

38. Waiver of Interest. City shall have no obligation to pay and Contractor hereby waives the right to recover interest with regard to monies which City must withhold by reason of judgment, order, statute or judicial process, or which it may withhold pursuant to this Contract.

39. Claims and Resolution of Disputes.

(a) General. The parties intend that differences between the parties, arising under the Contract, be brought to the attention of the City at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The parties agree to initially strive to resolve all disputes amicably and in an informal manner. Any dispute resolved informally shall be documented by the City, and if the dispute resolution involves a change in the contract work, increase or decrease in the compensation due the Contractor, or adjustment in the time of completion of the Work, then the informal dispute resolution shall be confirmed by a Change Order pursuant to section 12. Informal discussions or negotiations with the City or its representatives concerning informal resolution of a dispute shall not toll or suspend the claim filing and other deadlines provided below, unless so provided by the City in writing. Willingness of the City to engage in any such discussions is not a waiver of the City's right to deny a claim or dispute based on lack of merit, or procedural deficiency, or both.

(b) **Compliance Required.** Contractor shall not be entitled to any additional time to complete Work or to the payment of any additional compensation for claimed extra work (or otherwise on account of any claim, cause, act, failure to act, or happening of any event or occurrence) unless either City has issued a Change Order pursuant to section 12 or a claim has been timely filed and approved pursuant to this section. If the Contractor fails to file a written claim within the claim deadline in section 39(d), then the Contractor agrees that it has waived any right or remedy to thereafter pursue the claim against the City in any administrative, arbitration or litigation proceeding, and the City may elect to document this waiver.

(c) **Scope of Claims.** A claim for purposes of this section means a separate demand by the Contractor for (a) a time extension (including a demand for relief from damages or penalties for delay assessed by the City under the Contract), (b) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (c) an amount the payment of which is disputed by the City.

(d) **Filing of Contract Claim; Contents; Filing Deadline**

(i) The Contractor shall file any "Contract Claim" with the City. A Contract Claim must (a) be in writing, (b) be labeled or clearly indicated as a claim under the Contract, (c) set forth in detail the reasons why the Contractor believes additional compensation or a time extension is or may be due, the nature of the costs involved, and, insofar as possible, the amount of the claim, and (d) include (or reference earlier provided) documents that support and substantiate the claim as both entitlement and quantification of time, money, or both.

(ii) A Contract Claim must be submitted to the City within the following claim filing deadlines:

- A. if a deadline is set forth in the Contract for filing of the particular claim, then the claim must be filed by the specified time;
- B. if the claim relates to extra, additional or unforeseen work for which the Contractor intends to demand additional compensation, a time extension, or both, notice shall be given to the City prior to the time that the Contractor commences performance of the work giving rise to the potential claim for additional compensation or time extension, and Contractor shall not proceed with that work until so directed by the City; and
- C. for all other claims not included within (a) or (b), the claim must be filed on or before 15 days after the date of the occurrence, event or circumstance giving rise to the claim. In no event shall a Contract Claim be filed later than the date of final payment.

(e) **Processing of Claims, Generally.** This Contract provides for two types of Contract Claims, which will be processed and resolved under different subsections. Any claim for money or damages or for a time extension (i.e., any claim subject to Public Contract Code section 20104) shall be processed and resolved in accordance with section 39(f). Any Contract Claim sent

to City by registered mail or certified mail with return receipt requested (i.e., any claim subject to Public Contract Code section 9204) shall be processed and resolved pursuant to section 39(g).

(f) Claims for Money, Damages or for Time Extension

(i) City Response to Contract Claim. The City shall respond in writing to the Contract Claim within 60 days of receipt of the claim (or within 45 days of receipt for claims of less than \$50,000), or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subsection, upon mutual agreement of the City and the Contractor. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt (or 15 days after receipt for claims of less than \$50,000) of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater. The City shall not fail to pay money as to any portion of a Contract Claim that is undisputed except as otherwise provided in the Contract.

(ii) Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such a demand, the City shall schedule a meet and confer conference within 30 days for the parties to consider settlement of the dispute. If the Contractor fails to timely demand a meet and confer conference within the applicable 15-day period, then the Contractor shall be deemed not to dispute the City's written response to the Contract Claim and the City's decision on the Contract Claim shall be final, conclusive and binding, and the Contractor shall be deemed to have waived all its rights to further protest, judicial or otherwise.

(iii) Government Code Claim. Following the meet and confer conference, if the Contract Claim or any portion remains in dispute, the Contractor may file a Government Code Claim as provided in Government Code title 1, division 3.6, part 3, chapters 1 (commencing with section 900) and 2 (commencing with section 910). The running of the period of time within which Contractor must file a Government Code Claim shall be tolled from the time the Contractor submits a timely Contract Claim pursuant to section 39(d) until the time that the Contract Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process. The City shall respond to any Government Code Claim in accordance with the Government Claims Act.

(iv) Lawsuit. If the claim is not resolved pursuant to this section, the Contractor may file a lawsuit on the claim within the limitations period provided by the Government Claims Act. If the Contractor fails to timely file a lawsuit within the limitations period of the Government Claims Act, then the City's response to the Government Code Claim shall be final, conclusive and binding on the Contractor, and the Contractor thereafter shall be barred from filing a lawsuit on the claim.

(v) Mediation. If the Contractor timely files a lawsuit, then within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to non-binding mediation (unless waived by mutual stipulation of both parties). The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator. The mediator's fees and expenses shall be split and paid equally between the parties. The court may, upon request by any party, order any witnesses to participate in the mediation process.

(vi) Arbitration. If the matter remains in dispute following the mediation or if the parties waive the mediation, then the case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure part 3, title 3, chapter 2.5 (commencing with section 1141.10), notwithstanding section 1141.11 of that code. The Civil Discovery Act of 1986 (Code of Civil Procedure part 4, title 3, chapter 3, article 3 (commencing with section 2016.010)) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The arbitrator shall be experienced in public works construction law. The arbitrator's fees and expenses shall be split and paid equally by the parties, except where the arbitrator, for good cause, determines a different division. The court may, upon request by any party, order any witnesses to participate in the arbitration process. Any party who, after receiving an arbitration award, requests a trial de novo but does not obtain a more favorable judgment shall (in addition to payment of any costs and fees under Code of Civil Procedure part 3, title 3, chapter 2.5 (commencing with section 1141.10)) pay the attorney's fees of the other party arising out of the trial de novo.

(vii) Interest. In any lawsuit filed under this subsection, City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the lawsuit is filed in court.

(g) Claims Subject to Public Contract Code section 9204

(i) The Contract Claim will be processed and resolved pursuant to Public Contract Code section 9204, which is summarized here:

- A. City Review of Claim. Within 45 days after receiving a complete Contract Claim, City shall review the claim and provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. City will pay any undisputed portion of the claim within 60 days from the date of the written statement. If City fails to timely issue a written statement, the claim shall be deemed rejected in its entirety.
- B. Meet and Confer Conference. If the Contractor disputes the City's written statement or if the Contract Claim is deemed rejected, the Contractor may demand and the parties will conduct an informal conference to meet and confer regarding settlement in accordance with section 9204, subsection

(d)(2). Within 10 business days following the conclusion of the meet and confer conference, City shall provide Contractor a written statement identifying the portion (if any) of the claim remaining in dispute and any undisputed portion will be paid by City within 60 days after this written statement.

- C. Non-Binding Mediation. Any remaining disputed portion of the claim shall be submitted to nonbinding mediation in accordance with section 9204, subsection (d)(2).
- D. Interest. Any amount not paid in a timely manner as required by this subsection shall bear interest at a rate of 7 percent per annum until paid.

The foregoing is a summary of section 9204. In the event of any conflict between the summary and section 9204, the statute will govern.

(ii) Lawsuit and Judicial Reference. If mediation is unsuccessful and all or parts of the Contract Claim remain in dispute, then the Contractor may pursue a lawsuit. If the Contractor timely files a lawsuit, the case shall be submitted to judicial reference pursuant to California Code of Civil Procedure sections 638 and 640 through 645.1 (or any successor statute) and California Rules of Court title 3, division 9 (commencing with section 3.900). As authorized by Code of Civil Procedure section 638, a referee will consider and decide all factual and legal issues in the action. Each party acknowledges that it will not have any right to a jury trial or to have any judicial officer besides the referee hear or decide the action. When Contractor initiates the superior court lawsuit, it will, at the same time it files the complaint in the action, also file a motion for appointment of a single referee.

- A. Appointment of a referee shall be by mutual agreement within 30 days between the parties, and if unsuccessful, then by the court and will be governed by Code of Civil Procedure section 640, and subject to objection by either party as provided by Code of Civil Procedure section 641. The referee must be a retired judge or a licensed attorney with at least ten years substantive experience in public works construction matters.
- B. The parties shall be entitled to discovery and the referee shall oversee discovery and may enforce all discovery orders in the same manner as a superior court judge. The referee shall have the authority to consider and rule on appropriate pre-hearing and post-hearing motions in the same manner as a superior court judge. The referee will have the authority to set a briefing and hearing schedule for any such motion or for a hearing on the merits.
- C. The referee's statement of decision shall include findings of fact and conclusions of law. The statement of decision will stand as the decision of the superior court and, upon filing of the statement with the clerk of the court, judgment may be entered pursuant to Code of Civil Procedure section

644, subsection (a). The parties will have rights to appeal the final judgment so entered.

D. Each Party will pay half of the costs of the referee and the administrative fees of the reference proceeding, and each party will bear its own costs, expenses and attorney fees for the reference proceeding.

(h) **Contract Work Pending Claim Resolution.** Unless otherwise directed in writing by the City, pending resolution of a claim under this section, the Contractor shall continue to diligently prosecute the Work in accordance with the Contract and the instructions of the City.

(i) **Tort Claims.** The provisions of this section apply only to contract-based claims and they shall not apply to tort claims, and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Government Code title 1, division 3.6, part 3, chapters 1 (commencing with section 900) and 2 (commencing with section 910).

40. **Assignment of Anti-Trust Claims.** In entering into this Contract, Contractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S. Code, section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the California Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Contract. The assignment shall be made and become effective at the time City tenders final payment to Contractor, without further acknowledgement by the parties.

41. **Integration.** This Contract constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Contract, except those other documents that are expressly referenced in this Contract.

42. **Counterparts and Electronic Signatures.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Counterparts may be delivered by facsimile, electronic mail (including PDF or any electronic signature complying with California's Uniform Electronic Transactions Act (Civ. Code, §1633.1, et seq.) or any other applicable law) or other transmission method. The parties agree that any electronic signatures appearing on the Contract are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

43. **Independent Contractor.** The relationship between City and Contractor is that of an owner and independent contractor, and all persons hired or employed by Contractor shall be Contractor's employees, agents or subcontractors.

44. **Governing Law.** This Contract shall be construed and enforced in accordance with, and the validity and performance of this Contract shall be governed by, the laws of the State of California.

45. Waiver; Remedies. Any waiver at any time by either party of its rights with respect to a breach or default or any other matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any other breach, default or matter. The rights and remedies provided in this Contract are in addition to any of the rights and remedies provided by law.

46. Severability. The illegality or unenforceability of any provision of this Contract shall not render the other provisions unenforceable, invalid or illegal.

47. Binding on Successors. This Contract shall bind and inure to the benefit of the heirs, successors, assigns, and successor companies of the parties; however, Contractor shall not assign or transfer any rights, obligations or interest in the Contract without the prior written consent of City.

48. Notices. Any invoice, payment, notice, demand, request, consent, approval or notification of change of address that either party to this Contract may or is required to give to the other party will be in writing and signed for the party by an authorized officer and addressed to the addresses set forth above. All such notices will be deemed to have been received on the date of delivery if either personally delivered or sent by recognized national overnight courier service or three days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States post office for first-class delivery. Either party may change its address at any time by notifying the other party in writing of the change of address in accordance with this section.

The parties enter into and execute this Contract effective on the date written above.

**For City:**



Name: Bill Zenoni

Title: City Manager

**For Contractor:**



Name:



Title:

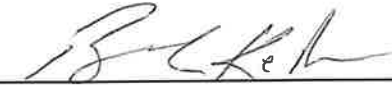


**CONTRACTOR'S WORKERS' COMPENSATION CERTIFICATE  
(LABOR CODE SECTION 1861)**

To: City of Wheatland

I am aware of the provisions of section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work under this Contract.

**For Contractor**

Authorized Signature:   
Printed Name: Brandon Kesterson  
Title: Owner  
Company Name: BK Custom Concrete  
Date: 2/5/25