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DOCUMENT 00001

**RECREATION & COMMUNITY SERVICES DEPARTMENT  
10300 TORRE AVENUE  
CUPERTINO, CALIFORNIA 95014**

**PROJECT MANUAL**

**FOR THE**

**BLACKBERRY FARM GOLF COURSE  
MAINTENANCE 2016**

**Proposal Due Date:  
Monday, Nov. 23, 2015**

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END OF SECTION



DOCUMENT 00100

### ADVERTISEMENT FOR BIDS

**NOTICE:** THE CITY OF CUPERTINO, a Municipal Corporation of the State of California ("City") hereby gives notice that it will accept Bids for:

## BLACKBERRY FARM GOLF COURSE MAINTENANCE 2016

1. **BID SUBMISSION:** The City uses a two-part Bid process with Bids in **Envelope "A"** and Statements of Qualification in **Envelope "B"**. City will accept **Envelope "A"** and **Envelope "B"** before **3:00 p.m.** on **Monday November 23, 2015 in the City Clerk's Office** in City Hall, 10300 Torre Avenue. City's representative will call out the designated time in the City Clerk's Office, stating that the period for accepting Bids is closed. Bids will be publicly read at 3:05 p.m. in the City Hall Lobby. The Bid opening will be in accordance with procedures set forth in Document 00200 (Instructions to Bidders).
2. **CONTACT INFORMATION:**  
Department of Recreation and Community Services  
408 777 3110 general  
408 777 3333 fax  
[gails@cupertino.org](mailto:gails@cupertino.org); [lzn@cupertino.org](mailto:lzn@cupertino.org)  
City Hall, 10300 Torre Avenue  
Cupertino, CA 95014
3. **STATEMENT OF QUALIFICATIONS:** Each Bidder shall be required to submit a "Statement of Qualifications" in accordance with Document 00450 (Statement of Qualifications).
4. **DESCRIPTION OF THE WORK:** Work includes maintenance of Blackberry Farm Golf Course in the city of Cupertino.
5. **CONTRACT TIME:** Work shall commence on January 1, 2016 and proceed per the contract requirements.
6. **REQUIRED CONTRACTOR'S LICENSE:** A **California Class "A" General Engineering or Class "C-27" Landscaping** contractor's license is required to Bid this Contract. Joint ventures must secure a joint venture license prior to award of this Contract. Removal, handling, and/or disposal of hazardous materials may, by law, require hazardous substance removal certification by the Contractor's State License Board.
7. **Required Contractor and Subcontractor Registration**
  - a. Owner shall accept Bids only from Bidders that (along with all Subcontractors listed in Document 00430 (Subcontractor List) are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5.
  - b. Subject to Labor Code Sections 1771.1(c) and (d), any Bid not complying with paragraph 1.01a above shall be returned and not considered; provided that if Bidder is a joint venture (Business & Professions Code Section 7029.1) or if federal funds are involved in the Contract (Labor Code Section 1771.1(a)), Owner may accept a non-complying Bid provided that Bidder and all listed Subcontractors are registered at the time of Contract award.
8. **PREVAILING WAGE LAWS:** The successful Bidder must comply with all prevailing wage laws applicable to the Project, and related requirements contained in the Contract Documents.

9. **INSTRUCTIONS:** Bidders shall refer to Document 00200 (Instructions to Bidders) for required documents and items to be submitted in sealed envelopes to City Clerk's office, as well as applicable times for submission.
10. **NON-MANDATORY PRE-BID CONFERENCE:** City will conduct a Non-mandatory Pre-Bid Conference at 1:30 PM on Friday, November 13, 2015 at the site, Blackberry Farm Golf Course, 22100 Stevens Creek Boulevard, Cupertino, CA. Any Bidder wishing to investigate subsurface conditions at the site must schedule such a visit with the City in accordance with Document 00200 (Instructions to Bidders).
11. **PROCUREMENT OF BIDDING DOCUMENTS:** Bidders may examine a complete hard-copy set of bid documents at the City's Office of the Director of Recreation and Community Services, City Hall, 10300 Torre Avenue in Cupertino.  
  
To obtain a copy of the bid documents, Bidders must download a set of bid documents from the City of Cupertino Web site at: <http://www.cupertino.org/index.aspx?page=119>, or from a plan room or trade journal site that carries them. The City will post all addendums to the project on the City web site and it is the Contractor's sole responsibility to download the addendums for the project. If a Contractor wishes to be on the plan holders list for the project the Contractor must send an e-mail to: [lizn@cupertino.org](mailto:lizn@cupertino.org) and [gails@cupertino.org](mailto:gails@cupertino.org) containing the following information: Contractor's name, address, phone and fax number, and e-mail address for future communications. The plan holders list will be updated regularly. Bidder is responsible for printing all of the bidding documents.
12. **BID PREPARATION COST:** Bidders are solely responsible for the cost of plan and specification printing and preparing their Bids.
13. **RESERVATION OF RIGHTS:** City specifically reserves the right, in its sole discretion, to reject any or all Bids, or re-bid, or to waive inconsequential deviations from Bid requirements not involving time, price, or quality of the Work.
14. **PORTION OF WORK PERFORMED BY THE CONTRACTOR:** The Contractor shall perform no less than 80% of the Work, excluding Specialty Items, with its own organization. Specialty Items will be identified on the Bid Form.

CITY OF CUPERTINO

By. Kristen Aguirre

*for* City Clerk

To be published in the San Jose Mercury News on November 7, 2015

END OF DOCUMENT

**INSTRUCTIONS TO BIDDERS**

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

**Blackberry Farm Golf Course Maintenance 2016**

1. **RECEIPT OF BIDS.** Sealed Bids will be received by the City at City's office (see paragraph 2 below) on **the date shown in the Advertisement for Bids**. City will receive Bids in two separate opaque sealed 10" x 13" envelopes, labeled **Envelope "A"** and **Envelope "B"** each containing the respective items described in paragraphs 4 and 5 below. All Bid envelopes will be time stamped to reflect their submittal time. **Envelope "A" and Envelope "B" shall be due before 3:00 p.m.** as determined by the clock on the wall of the office of the City Clerk. Bids will be publicly read at 3:05 p.m. in the City Hall Lobby. City will reject all Bids received after the specified time and will return such Bids to Bidders unopened. Bidders must submit Bids in accordance with this Document 00200.
2. **CONTACT INFORMATION.**

Mailing address:  
City of Cupertino  
City Hall  
10300 Torre Avenue  
Cupertino, CA 95014

City's Authorized Representative:  
Carol Atwood, Director of Recreation and Community Services

Telephone:  
(408) 777-3110

Emails:  
[lizn@cupertino.org](mailto:lizn@cupertino.org); [gails@cupertino.org](mailto:gails@cupertino.org)

Fax:  
(408) 777-3366
3. **BID SUBMISSION.** Bidder should mark its Bid envelopes as **BID FOR BLACKBERRY FARM GOLF COURSE MAINTENANCE 2016**, Envelope "A" or "Envelope "B," as appropriate. Bids shall be deemed to include the written responses of the Bidder to any questions or requests for information of City made as part of Bid evaluation process after submission of Bid. Bidder's failure to submit all required documents strictly as required entitles City to reject the Bid as non-responsive.
4. **CONTENTS OF ENVELOPE "A" - BID PRICE.** Envelope "A" shall include:
  - a. Document 00400 (Bid Form) completed in accordance with paragraph 6 of this Document 00200.
  - b. Document 00430 (Subcontractors List) in accordance with paragraph 8 of this Document 00200.
  - c. Document 00481 (Non-Collusion Affidavit).
5. **CONTENTS OF ENVELOPE "B" – BIDDER STATEMENT OF QUALIFICATIONS.** Envelope "B" shall include:
  - a. Document 00450 (Statement of Qualifications) submitted in accordance with this Document 00200.
  - b. Document 00482 (Bidder Certifications). Bidder must complete this form as indicated.
6. **REQUIRED BID FORMS.** All Bidders must submit Bids using, where applicable, documents supplied in this Project Manual, including without limitation Document 00400 (Bid Form), Document 00430 (Subcontractors List), Document 00450 (Statement of Qualifications), Document 00481 (Non-Collusion Affidavit), and Document 00482 (Bidders Certifications). City will reject as non-responsive any Bid not submitted on the required forms. Bids must be full and complete. Bidders must complete all Bid items and supply all information

required by Bidding Documents. Bidder must completely fill out all forms required for the bid. City reserves the right in its sole discretion to reject any Bid as non-responsive as a result of any error or omission in the Bid. Bidders may not modify the Bid Form or qualify their Bids. Bidders must submit clearly and distinctly written Bids. Bidders must clearly make any changes in their Bids by crossing out original entries, entering new entries, and initialing new entries. City reserves the right to reject any Bid not clearly written.

7. **REQUIRED SUBCONTRACTORS LIST.** All Bidders must submit with their Bids the required information on all Subcontractors in Document 00430 (Subcontractors List) for those Subcontractors who will perform any portion of Work, including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement, in excess of one half of one percent of total Bid or ten thousand dollars (\$10,000), whichever is greater. Violation of this requirement may result in Bid being deemed non-responsive and being rejected.

8. **REQUIRED STATEMENT OF QUALIFICATIONS.** In order for a Bidder to be eligible to Bid on this Contract, it must submit a Statement of Qualifications responsive to the requirements identified in Document 00450 (Statement of Qualification) ("SOQ"), including without limitation qualification information for Subcontractors and schedulers, if any. Except as otherwise provided in this Document 00200 or in Document 00450 (Statement of Qualification), City will make final determinations regarding Bidder responsibility based upon the SOQ submitted as part of Envelope "B". Information in the SOQ shall be current.

No engineering or architectural firm which has provided design services for a project shall be eligible to submit a proposal for the contract to construct the project nor to subcontract for any portion of the work. The ineligible firms include the prime contractor for design, subcontractors of portions of the design and affiliates of either. An affiliate is a firm which is subject to the control of the same persons, through joint ownership or otherwise.

9. **PRE-BID ACTIVITY:**

Any Bidder wishing to investigate subsurface conditions or otherwise conduct invasive investigations, explorations, tests, or studies at this Site, must schedule the visit with the City by giving the City at least seven (7) days written notice. Additionally, any such Bidder must deliver an executed Document 00210 (Indemnity and Release Agreement) and provide an insurance certificate as described therein by noon of the Day prior to the examination.

Bidders who intend only to observe existing Site conditions and not conduct subsurface examinations are not required to provide an executed Document 00210 (Indemnity and Release Agreement) or an insurance certificate, but are requested to contact the Recreation and Community Services Department to arrange for access to the site.

Bidders are encouraged to submit written questions in connection with the Site Visit. City will post on its website and will transmit to all parties recorded, as having received Bidding Documents such information, as City, in its discretion, considers necessary in response to written questions. Bidders shall not rely on oral statements. Oral statements will not be binding or legally effective.

10. **OTHER REQUIREMENTS PRIOR TO BIDDING.** Submission of Bid signifies Bidder's careful examination of Bidding Documents and complete understanding of the nature, extent, and location of Work to be performed.
11. **EXISTING DRAWINGS AND GEOTECHNICAL DATA.** Bidders may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work) by giving City reasonable advance notice, as well as applicable environmental assessment information (if any) regarding the Project.
12. **ADDENDA.** Bidders must direct all questions about the meaning or intent of Bidding Documents to City (Attention: City's Authorized Representative) in writing. Letters, Faxes or emails are acceptable forms of written questions. Interpretations or clarifications considered necessary by City in response to such questions will be issued by Addenda mailed, faxed, or delivered to all "Bid List" parties, recorded by City as having received Bidding Documents. Addenda will be written and will be issued to each Bidder to the address or fax number supplied City by Bidder. City may not answer questions received less than ten Days prior to the date for opening Bids. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
  - a. Addenda may be issued to modify the Bidding Documents as deemed advisable by City.
  - b. Addenda shall be acknowledged by number with signature in Document 00400 (Bid Form) and shall be part of the Contract Documents. A complete listing of Addenda may be secured from City.

- 13. SUBSTITUTIONS.** Bidders must base their Bids on products and systems specified in Contract Documents or Addenda.
- Except as provided in paragraph 13.c below, City will consider substitution requests only for “or equal items.”
  - Approved substitutions shall be listed in Addenda and become part of the Contract Documents.
  - Substitutions may be requested after submitting Bids and the Award of Contract only in accordance with requirements specified in Document 00700 (General Conditions).
- 14. WAGE RATES.** Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at City’s Public Works office or may be obtained of the State of California web site <http://www.dir.ca.gov/DLSR/PWD/Northern.html> and are deemed included in the Bidding Documents. Upon request, City will make available copies to any interested party. Also, Contractor shall post the applicable prevailing wage rates at the Site.
- 15. EQUAL EMPLOYMENT OPPORTUNITY.** Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.
- 16. BID OPENING.** City will open all Bidders’ Envelopes “A,” at the time and on the date specified in paragraph 1 above, and initially evaluate them for responsiveness. City will not open Envelopes “B” publicly.
- 17. EVALUATION OF BIDDER RESPONSIBILITY (Envelope “B”).**
- Document 00450 sets forth certain criteria for a Bidder to be found responsible. Bidder’s attention is called to the following minimum requirements for a Bidder to be found responsible to perform the Work:
    - Contracting/Subcontracting Prior Experience. Satisfactory experience on similar work, including without limitation no history of default termination, excessively delayed completion or excessive defective work.
    - Projects Public Experience. Evidence that Bidder and its team, including without limitation its Subcontractors (hereafter, including Bidder if Bidder performs such Work itself, “designated Subcontractor(s)”), have the human and physical resources of sufficient quantity and quality to perform the Work under Contract Documents in a timely and Specification-compliant manner, to include:
      - Construction and management organizations with sufficient personnel and requisite disciplines, licenses, skills, experience, and equipment for the Project.
      - Minimum licensing requirements including evidence of a valid California contractor’s license as specified for the Bidder and evidence of requisite licenses for Key Personnel of Bidder or any designated Subcontractor(s).
      - Sufficiency of proposed quality assurance plan to meet the requirements of the Contract Documents.
      - Bidder’s safety record.
      - Minimum experience requirements of the prime contractor including the completion of a suitable number of projects of similar nature and complexity for contract dollar amounts equal to what is specified in Document 00450 (Statement of Qualification).
      - A field organization with skills, experience, and equipment sufficient to perform all on-Site work and necessary scheduling.
      - Expertise of Key Personnel to accomplish the duties and responsibilities required to perform the Work under the Contract Documents. Minimum experience requirements of Key Personnel including the completion of projects of similar nature and complexity and having the number of years of experience on projects of similar nature and complexity as specified in Document 00450 (Statement of Qualifications).
- 18. BID EVALUATION.** City may reject any or all Bids and waive any informalities or minor irregularities in the Bids. City also reserves the right, in its discretion, to reject any or all Bids and to re-Bid the Project. City reserves the right to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids, and to reject the Bid of any Bidder if City believes that it would not be in the best interest of Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is not suitably qualified or fails to meet any other pertinent standard or criteria established by City. For purposes of this paragraph, an “unbalanced Bid” is one having nominal prices for some work items and enhanced prices for other work items.

- a. In evaluating Bids, City will consider Bidders' qualifications, whether or not the Bids comply with the prescribed requirements, unit prices and other data, as may be requested in Document 00400 (Bid Form) or prior to the Notice of Award.
- b. City may conduct reasonable investigations and reference checks of Bidder, proposed Subcontractors, suppliers and other persons and organizations as City deems necessary to assist in the evaluation of any Bid and to establish Bidder's responsibility, qualifications, financial ability, proposed Subcontractors, suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to City's satisfaction within the prescribed time. Submission of a Bid constitutes Bidder's consent to the foregoing. City shall have the right to consider information provided by sources other than Bidder.
- c. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between written words and figures will be resolved in favor of the words.
- d. Quantities stated in the Bidding Documents are approximate only and are subject to correction upon final measurement of the Work, and are subject further to the rights reserved by the City to increase or diminish the amount of work under any classification as advantages to design or construction needs require.
- e. City may determine whether a Bidder is qualified in its sole discretionary judgment.
- f. Required Contractor and Subcontractor Registration
  - 1) Owner shall accept Bids only from Bidders that (along with all Subcontractors listed in Document 00430, Subcontractors List) are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5.
  - 2) Subject to Labor Code Sections 1771.1(c) and (d), any Bid not complying with paragraph 20g, above, shall be returned and not considered; provided that if Bidder is a joint venture (Business & Professions Code Section 7029.1) or if federal funds are involved in the Contract (Labor Code Section 1771.1(a)), Owner may accept a non-complying Bid provided that Bidder and all listed Subcontractors are registered at the time of Contract award.

**19. BID PROTEST.** Any Bid protest must be submitted in writing to the City's offices (Attention: City's Authorized Representative), before 3:30 p.m. of the third Calendar Day following opening of Bidders' Envelope "A"s.

- a. The initial protest document must contain a complete statement of the basis for the protest.
- b. The protest must refer to the specific portion of the document that forms the basis for the protest.
- c. The protest must include the name, address, and telephone number of the person representing the protesting party.
- d. Only Bidders who the City otherwise determines are responsive and responsible are eligible to protest a Bid; protests from any other Bidder will not be considered. In order to determine whether a protesting Bidder is responsive and responsible, City will evaluate information contained in any protesting Bidder's Envelope "B". Any such opened Envelope "B" shall also be subject to all provisions of paragraph 23.
- e. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- f. The procedure and time limits set forth in this paragraph are mandatory and are Bidder's sole and exclusive remedy in the event of Bid protest. Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings. A Bidder may not rely on a protest submitted by another Bidder, but must timely pursue its own protest.

**20. POST-NOTICE OF AWARD REQUIREMENTS.** After Notice of Award, the successful Bidder must execute and submit the following documents as indicated below.

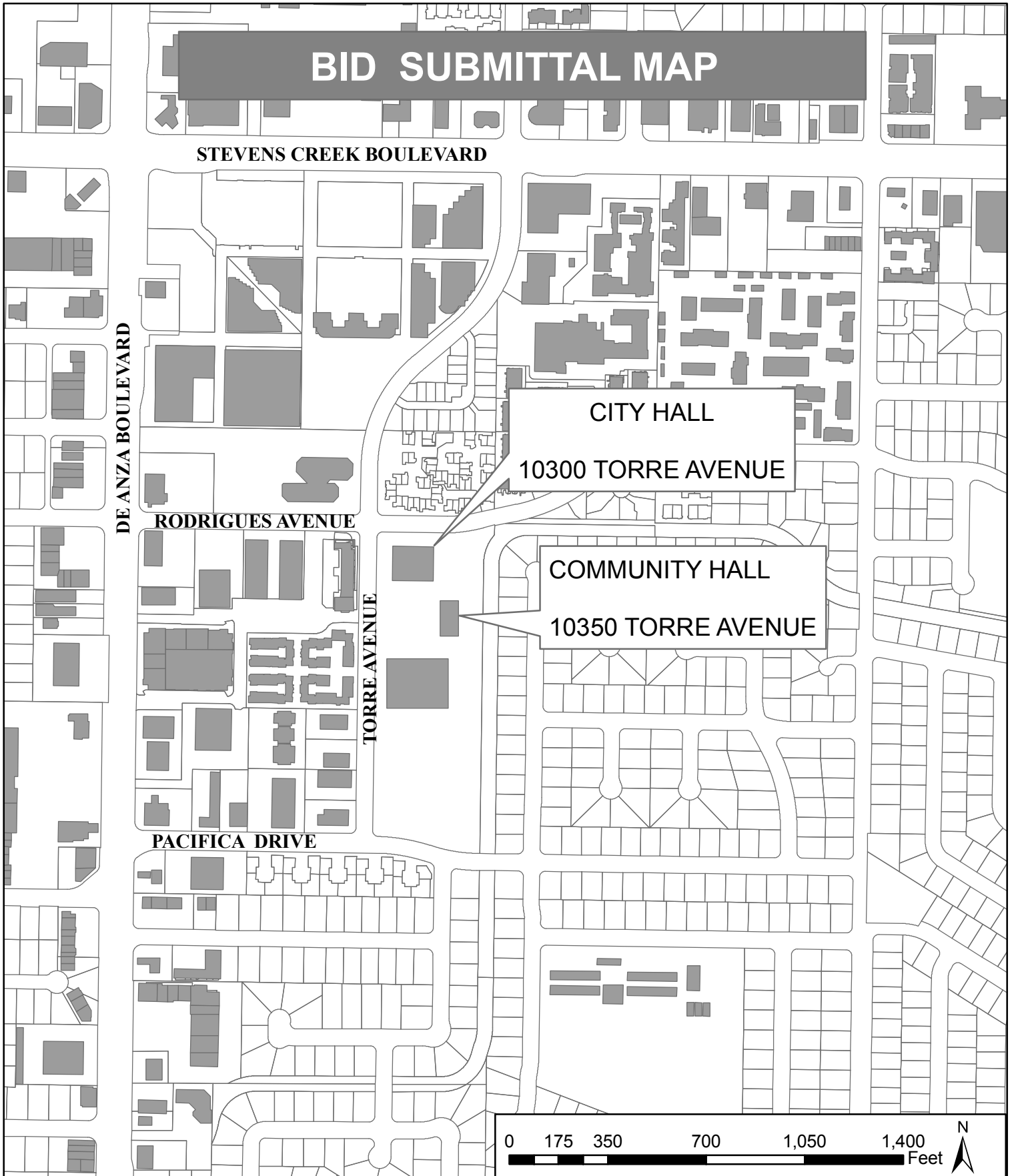
- a. Submit the following documents to City by 5:00 p.m. of the 10<sup>th</sup> Calendar Day following Notice of Award. Execution of Contract by City depends upon approval of these documents:
  - 1) Contract: To be executed by successful Bidder. Submit four originals, each bearing an original signature.
  - 2) Insurance certificates and endorsements as required Submit one original set.



- b. Successful Bidder's failure to submit the documents required herein, in a proper and timely manner, entitles City to rescind its award.
- 21. **MODIFICATION OF COMMENCEMENT OF WORK.** City expressly reserves the right to modify the date for the Commencement of Work under the Contract and to independently perform and complete work related to the Project. City accepts no responsibility to Contractor for any delays attributed to its need to complete independent work at the Site.
- 22. **WITHDRAWAL OF BIDS.** Bidders may withdraw their Bids at any time prior to the Bid opening time fixed in this Document 00200, only by written request for the withdrawal of Bid filed with the City at the City's office. Bidder or its duly authorized representative shall execute request to withdraw Bid. The submission of a Bid does not commit the City to award a contract for the Project, to pay costs incurred in the preparation of a Bid, or to procure or contract for any goods or services.
- 23. **PUBLIC RECORDS ACT REQUESTS.**
  - a. City will make available to the public documentation associated with this process per the Public Records Act as applicable. City will make such information available to the extent required by applicable law, without restriction.
  - b. Information disclosed in the SOQ and the attendant submissions are the property of City.
- 24. **CONFORMED CONSTRUCTION DOCUMENTS.** Following Award of Contract, City may prepare a conformed set of Contract Documents reflecting Addenda issued during bidding, which will, failing objection, constitute the approved set of Contract Documents.
- 25. **DEFINITIONS.** All abbreviations and definitions of terms used in this Document 00200 are set forth in Section 00700.

END OF DOCUMENT

BID SUBMITTAL AND SITE MAP





**INDEMNITY AND RELEASE AGREEMENT**

Dated \_\_\_\_\_

POTENTIAL BIDDER: \_\_\_\_\_

CITY: THE CITY OF CUPERTINO

SITE: 22100 Stevens Creek Blvd, Cupertino, CA 95014

PROJECT: Blackberry Farm Golf Course Maintenance 2016

In consideration of the above-referenced City's permitting the undersigned potential bidder ("Bidder") to have access to, and to conduct investigations, tests and/or inspections on, the Site, Bidder hereby agrees as follows:

1. To the greatest extent permitted by law, Bidder hereby releases, and shall defend, indemnify and hold harmless City, and its officers, employees, consultants (including without limitation Consulting Engineer), representatives, and agents, and all other parties having any other interest in the Site, against any claim or liability, including attorney's fees, arising from or relating to any Site-related access, investigation, test, inspection and/or other activity conducted by Bidder or any of Bidder's officers, employees, consultants, representatives, and/or agents, regardless of whether claim or liability is caused in part by the negligence of City or by any released and indemnified party.
2. Bidder hereby waives the provisions of California Civil Code Section 1542 which provides as follows:  
  
A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor.
3. Bidder shall repair any damage to the Site or adjacent property resulting from activities authorized hereunder, and comply with and be subject to all other requirements and obligations described or referenced in the bid documents.
4. Attached hereto (or to be delivered separately before Bidder's visit to the Site) is a certificate for comprehensive general liability insurance satisfying the requirements of Document 00700 (General Conditions).
5. Although this Indemnity and Release Agreement is not a Contract Document, it shall be fully effective and binding regardless of whether Bidder submits a Bid for the subject Project, is awarded a contract for the Project, or otherwise.

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

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

Its: \_\_\_\_\_  
Title (If Corporation: Chairman, President or Vice President)

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

Its: \_\_\_\_\_  
Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

Contractor's Name: \_\_\_\_\_

DOCUMENT 00400

**BID FORM**

To be submitted as part of Envelope "A" by the time and date specified in Document 00200 (Instructions to Bidders).

**TO THE HONORABLE CITY COUNCIL OF THE CITY OF CUPERTINO**

THIS BID IS SUBMITTED BY:

\_\_\_\_\_  
(Firm/Company Name)

**Re: Blackberry Farm Golf Course Maintenance 2016**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a contract with the City of Cupertino ("City") in the form included in the Contract Documents, Document 00510 (Contract), to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents. All portions of this Bid Form must be completed and signed before the bid is submitted. Failure to do so will result in the bid being rejected as non-responsive.
2. Bidder accepts all of the terms and conditions of the Contract Documents, Document 00100 (Advertisement for Bids), and Document 00200 (Instructions to Bidders). **This Bid will remain subject to acceptance for 90 Days after the day of Bid opening.**
3. Bidder has visited the Site and performed tasks, research, investigation, reviews, examinations, and analysis, regarding the Project and the Site.
4. Bidder has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and actual conditions and the written resolution thereof through Addenda issued by City is acceptable to Contractor.
5. Subcontractors for work included in all Bid items, in accordance with the criteria in the Public Contract Code, are listed on the attached Document 00430 (Subcontractors List).
6. The undersigned Bidder understands that City reserves the right to reject this Bid.
7. If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Award, is mailed or delivered to the undersigned Bidder within the time described in paragraph 2 of this Document 00400 or at any other time thereafter before it is withdrawn, the undersigned Bidder will execute and deliver the documents required by Document 00200 (Instructions to Bidders) within the times specified therein. These documents include, but are not limited to, Document 00510 (Contract).
8. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the address set forth below on the signature page.
9. The undersigned Bidder agrees to commence Work under the Contract Documents on the date established in Document 00700 (General Conditions) and to complete all work within the time specified in Document 00510 (Contract). The undersigned Bidder acknowledges that City has reserved the right to delay or modify the commencement date. The undersigned Bidder further acknowledges City has reserved the right to perform independent work at the Site, the extent of such work may not be determined until after the opening of the Bids, and that the undersigned Bidder will be required to cooperate with such other work in accordance with the requirements of the Contract Documents.

## **NOTICE**

### ***Required Contractor and Subcontractor Registration***

1. Owner shall accept Bids only from Bidders that (along with all Subcontractors listed in Document 00430, Subcontractors List) are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5.
2. Subject to Labor Code Sections 1771.1(c) and (d), any Bid not complying with paragraph, above, shall be returned and not considered; provided that if Bidder is a joint venture (Business & Professions Code Section 7029.1) or if federal funds are involved in the Contract (Labor Code Section 1771.1(a)), Owner may accept a non-complying Bid provided that Bidder and all listed Subcontractors are registered at the time of Contract award.

Contractor's Name: \_\_\_\_\_

### **SCHEDULE OF BID PRICES**

All Bid items, including lump sums and unit prices, must be filled in completely. Allowances and Alternative Bid items if applicable are described in Document 00800 (Special Conditions). Quote in figures only, unless words are specifically requested.

| ITEM                  | SPEC REF                     | DESCRIPTION   | UNIT  | EST QTY | UNIT PRICE | TOTAL<br>(Qty x Unit Price) |
|-----------------------|------------------------------|---|-------|---------|------------|-----------------------------|
| 1                     | Technical Provisions & 00800 | Provide one month of maintenance at Blackberry Farm Golf Course, Jan. – June 2016 | month | 6       |            |                             |
| 2                     | Technical Provisions         | Soil Sample Collection & Testing  | EA    | 6       |            |                             |
| <b>TOTAL BASE BID</b> |                              |   |       |         |            |                             |

Total Bid: \_\_\_\_\_  
(words)

### **SCHEDULE OF ALTERNATES**

#### **ALTERNATES**

| ITEM  | SPEC REF                     | DESCRIPTION  | UNIT  | EST QTY. | UNIT PRICE | TOTAL<br>(Qty x Unit Price) |
|---|------------------------------|--|-------|----------|------------|-----------------------------|
| <b>BID ALTERNATE 1: Provide Maintenance at Blackberry Farm Golf Course, July 2016 - June 2017</b> |                              |  |       |          |            |                             |
| 3   | Technical Provisions & 00800 | Provide maintenance, each month, July 2016-June 2017 | month | 12       |            |                             |
| 4   | Technical Provisions         | Soil Sample Collection and Testing                   | EA    | 12       |            |                             |
| <b>BID ALTERNATE 1, TOTAL, ITEMS 3 + 4</b>  |                              |  |       |          |            |                             |
| <b>BID ALTERNATE 2: Provide Maintenance at Blackberry Farm Golf Course, July 2017 - June 2018</b> |                              |  |       |          |            |                             |
| 5   | Technical Provisions & 00800 | Provide maintenance, each month, July 2017-June 2018 | month | 12       |            |                             |
| 6   | Technical Provisions         | Soil Sample Collection and Testing                   | EA    | 12       |            |                             |
| <b>BID ALTERNATE 2, TOTAL, ITEMS 5 + 6</b>  |                              |  |       |          |            |                             |

#### **Unit Legend**

|                           |                  |
|---------------------------|------------------|
| LS = Lump Sum             | AL = Allowance   |
| EA = Each                 | SF = Square Feet |
| LF = Linear Feet          |                  |
| TON = Ton or 2,000 Pounds |                  |
| CY = Cubic Yards          |                  |
| LB = Pounds               |                  |

Contractor's Name: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDUMS**

Bidder hereby acknowledges receipt and examination of all Contract Documents and the following Addenda:

| Addendum No. | Addendum Date |
|--------------|---------------|
|              |               |
|              |               |
|              |               |

Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the sums of money listed in this Bid Form.

**NAME OF BIDDER:** \_\_\_\_\_

licensed in accordance with an act for the registration of Contractors, and with license number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_.

\_\_\_\_\_  
Where incorporated, if applicable

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Principals

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

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

NOTE: If Bidder is a corporation, set forth the legal name of the corporation, state where incorporated, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address:

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

Officers authorized to sign contracts:

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

Telephone Number(s):

\_\_\_\_\_  
Typed Full Name:

\_\_\_\_\_

Fax Number(s):

\_\_\_\_\_

E-Mail Address:

\_\_\_\_\_

END OF DOCUMENT



Contractor's Name: \_\_\_\_\_

DOCUMENT 00450

## STATEMENT OF QUALIFICATIONS

### FOR

## BLACKBERRY FARM GOLF COURSE MAINTENANCE 2016

Bidder's Full Corporate Name: \_\_\_\_\_

Bidder's Legal Structure

- \_\_\_\_\_ Sole Proprietor
- \_\_\_\_\_ Partnership
- \_\_\_\_\_ Non-Profit 501 C3
- \_\_\_\_\_ Corporation
- \_\_\_\_\_ Other, please explain \_\_\_\_\_

Bidder's Federal I.D. Number \_\_\_\_\_

Bidder's Mailing Address \_\_\_\_\_

Bidder's Street Address \_\_\_\_\_

Owner of Bidder's Company \_\_\_\_\_

Bidder's Contact Person \_\_\_\_\_

Bidder's Address \_\_\_\_\_

Bidder's Phone \_\_\_\_\_, Fax \_\_\_\_\_, Email \_\_\_\_\_

(Bidder shall identify each partner and / or member of the Joint Venture, and their roles and responsibilities, if a Joint Venture is proposed.)

### INSTRUCTIONS FOR THE SUBMITTAL OF THE STATEMENT OF QUALIFICATIONS

- Place the Statement of Qualifications Document, with all required materials, in a separate envelope labeled **"Envelope B", "STATEMENT OF QUALIFICATIONS" (SOQ)** with the project title and Contractors name and address. **Do Not place the SOQ in the same envelope as the Bid Proposal. The envelope will not be opened if only one is received; it will be returned to the Contractor.**
- Submittal of the Statement of Qualifications envelope is required at the same time as the Bid Proposal. The Bid Proposal, Envelope "A", will not be opened if the Statement of Qualifications, Envelope B, is not received on time.
- The City will open only Bid Proposals, Envelope "A", at the public bid opening. Statement of Qualifications, Envelope "B", will be opened by the City thereafter to check contents for compliance with the requirements.

### GENERAL BIDDER EXPERIENCE

Any explanation requested by a Bidder regarding the meaning or interpretation of this Document must be requested in writing and with sufficient time allowed for a reply to reach Bidder before the submission of its SOQ. Oral explanations or instructions will not be binding. Any information provided to any prospective Bidder concerning this Document will be furnished to all prospective Bidders as an Addendum to the Bidding Documents.

Except as set forth herein, all abbreviations and definitions of terms used in this Document 00450 are as set forth in Document 00700 (General Conditions).

Contractor's Name: \_\_\_\_\_

**Bidders shall complete the entire Statement of Qualification. Failure to complete the questionnaire or the inclusion of any false statement(s) shall be grounds for immediate disqualification.**

The SOQ shall be clear and concise to enable management-oriented personnel to make a thorough evaluation and arrive at a sound determination as to whether the SOQ meets City's criteria. To this end, the SOQ should be so specific, detailed and complete as to demonstrate clearly and fully that the Bidder has a thorough understanding of and has demonstrated knowledge of the requirements to perform the Work (or applicable portion thereof).

Bidder's compliance with the qualification requirements of this Document, will also be measured by the experience of the supervisory personnel who will have responsible charge of the various major components of the Work.

If Bidder subcontracts portions of the Work, City, in its determination of whether the qualification requirements have been met, will also consider the qualifications of the Subcontractor's supervisory personnel.

The Contract will require Bidder to implement the Project, all in accordance with the scope of Work set forth in the Contract. City will accept Bids only from Bidders duly licensed in accordance with the California Business & Professions Code. Additionally, Bidder must meet the following general requirements, at a minimum, in order to be considered by City to be qualified for award of the Contract:

Per the Public Records Act, City will make available to the public documentation associated with this process as applicable.

City will make such information available to the extent required by applicable law, without restriction.

Information disclosed in the Statement of Qualifications and the attendant submissions are the property of City.

Contractor's Name: \_\_\_\_\_

**PART A  
BIDDER'S GENERAL QUALIFICATIONS**

1. Does Bidder have at least seven years of experience as a continuously operating entity engaged in the performance of similar work? Yes\_\_\_\_\_ No\_\_\_\_\_
2. Has Bidder, within the past seven years, completed two or more projects, of similar nature and complexity, with a contract amount of at least \$ 175,000 each? Yes\_\_\_\_\_ No\_\_\_\_\_
3. Does Bidder possess a valid and current California Class "A" General Engineering or Class C-27 Landscaping Contractor's License for the work proposed? Yes\_\_\_\_\_ No\_\_\_\_\_
4. Does Bidder have a minimum of \$2,000,000 in the aggregate liability insurance coverage? Yes\_\_\_\_\_ No\_\_\_\_\_
5. Has Bidder's Contractor's license been revoked at any time in the last five years? Yes\_\_\_\_\_ No\_\_\_\_\_
6. Has Bidder been "default terminated" by an owner (i.e. not for convenience), or has a Surety completed a contract for Bidder, or has Bidder failed to complete a contract, within the last five years? Yes\_\_\_\_\_ No\_\_\_\_\_
7. Has Bidder had, within the last four years prior to the date of bid opening, any outstanding convictions or enforcement agency findings for failure to pay prevailing wages in the State of California? Yes\_\_\_\_\_ No\_\_\_\_\_
8. Has Bidder been determined to have violated any environmental or safety laws giving rise to civil or criminal penalties in excess of \$50,000 for each violation during the last four years while performing contracting duties of the type specified for the contract within the State of California? Or has bidder had more than four civil penalties of \$50,000 or less during the last four years while performing contracting duties of the type specified for the contract within the State of California? Yes\_\_\_\_\_ No\_\_\_\_\_
9. Has Bidder been convicted of violating a state or federal law respecting the employment of undocumented aliens within the preceding five years from the date of bid opening? Yes\_\_\_\_\_ No\_\_\_\_\_

**Bidder will be immediately disqualified if any answer to questions 1, 2, 3, or 4 is No.**

**Bidder will be immediately disqualified if any answer to questions 5, 7, 8, or 9 is Yes.**

Contractor's Name: \_\_\_\_\_

**PART B**  
**BIDDER'S SAFETY, PREVAILING WAGE, LICENSES, DISPUTES, AND INSURANCE**

**SAFETY**

The following statements as to safety experience of Bidder are submitted with Bid, as part thereof, and Bidder guarantees the truthfulness and accuracy of the information.

1. Has Cal/OSHA, Federal OSHA, the EPA or any Air Quality Management District cited Bidder in the past five years? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, attach description of each citation.
2. How often does Bidder require documented safety meetings be held for:

|                    |              |                 |               |                         |
|--------------------|--------------|-----------------|---------------|-------------------------|
| • Field Supervisor | Weekly _____ | Biweekly _____  | Monthly _____ | Less than monthly _____ |
| • Employees        | Weekly _____ | Bi-weekly _____ | Monthly _____ | Less than monthly _____ |
| • New Hires        | Weekly _____ | Bi-weekly _____ | Monthly _____ | Less than monthly _____ |
| • Subcontractors   | Weekly _____ | Bi-weekly _____ | Monthly _____ | Less than monthly _____ |
3. How often does Bidder conduct documented safety inspections? Quarterly \_\_\_\_\_, Semi-annually \_\_\_\_\_, Annually \_\_\_\_\_, Other \_\_\_\_\_
4. Does Bidder have home office safety representatives who visit/audit the job site? Quarterly \_\_\_\_\_, Semi-annually \_\_\_\_\_, Annually \_\_\_\_\_, Other \_\_\_\_\_
5. What is Bidder's Interstate Experience Modification Rate? \_\_\_\_\_. (A rating in excess of 1 may constitute grounds for disqualification as non-responsible.)
6. List Bidder's Interstate Experience Modification Rate for the three calendar years listed below.
  - 2011: \_\_\_\_\_
  - 2012: \_\_\_\_\_
  - 2013: \_\_\_\_\_
7. Use Bidder's last year's Cal/OSHA log to fill in the following:

|                                     |       |
|-------------------------------------|-------|
| • Number of lost workday cases      | _____ |
| • Number of medical treatment cases | _____ |
| • Number of fatalities              | _____ |
| • Employee hours worked last year   | _____ |
8. State the name of Bidder's safety engineer/manager or Site Safety Officer and attach a resume or outline of this individual's safety and health qualifications and experience. \_\_\_\_\_

**PREVAILING WAGE PROVISIONS**

Has Bidder been fined, penalized or otherwise found to have violated any prevailing wage or labor code provision? If yes, attach description of each occurrence.

Yes \_\_\_\_\_ No \_\_\_\_\_

Description: \_\_\_\_\_  
\_\_\_\_\_

**Contractor's Name:** \_\_\_\_\_

**LICENSE PROVISIONS**

Has Bidder changed names or license numbers in the past seven years? If so, please state reason for change.

Yes \_\_\_\_\_ No \_\_\_\_\_ Reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DISPUTES**

Has Bidder had any claims, litigation, or disputes ending in mediation or arbitration, or termination for cause associated with any project in the past seven years? If yes, attach description of each such instance including details of total claim amount, settlement amount, and owner's name and phone number.

Yes \_\_\_\_\_ No \_\_\_\_\_

**INSURANCE**

Demonstrate Ability to Provide Required Insurance. Bidder shall provide a letter from an insurance underwriter(s), having a financial rating from A. M. Best Company of **A, Class 7** or better or that is otherwise acceptable to the City, confirming that the insurer will provide Bidder the required coverages and amounts specified in Document 00700 (General Conditions).

In order to register to undertake work for the City of Cupertino, Bidder must provide the following:

- 1) Fill out this registration form completely.
- 2) Provide certificates of insurance complying with Document 00700 (General Conditions).

**Workers' Compensation:**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

Coverage Amount: Per Occurrence: \$ \_\_\_\_\_ A.M. Best Rating: \_\_\_\_\_

**General Liability:**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

Coverage Amount: Per Occurrence: \_\_\_\_\_ Per Aggregate: \_\_\_\_\_

**Contractor's Name:** \_\_\_\_\_

**Excess Liability: If Contractor has this Coverage**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

Coverage Amount: Per Occurrence: \_\_\_\_\_ Per Aggregate: \_\_\_\_\_

**Contractor's Name:** \_\_\_\_\_

**Automotive Liability:**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

Coverage Amount Per Occurrence: \_\_\_\_\_

If Bidder has had the general liability carrier identified in this Document (Bidder Registration and Safety Experience Form) for less than 5 years, please provide additional information below for balance of the past 5 years

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

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

Phone Number: \_\_\_\_\_

Carrier: \_\_\_\_\_ A.M. Best Rating \_\_\_\_\_

Carrier: \_\_\_\_\_ A.M. Best Rating \_\_\_\_\_

Carrier: \_\_\_\_\_ A.M. Best Rating \_\_\_\_\_

Has Bidder ever had insurance terminated by a carrier? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, explain on separate signed sheet marked with correlating cross-reference to this paragraph of the questionnaire.

Contractor's Name: \_\_\_\_\_

## PART C DETAILED BIDDER EXPERIENCE

The unique nature of this Project requires prior similar experience maintaining golf courses by the firm and the Key Personnel assigned. Contractor must have completed, within the last seven years, at least two contracts of at least two years duration with an annual value of \$175,000 or more.

Contractor is expected to have successful experience in maintaining a golf course that is adjacent to or drains to a creek, river or fresh water body with a population of State- or Federally-protected salmonids such as steelhead trout or chinook salmon. Note your firm's related experience and note how your work is conducted to accommodate presence of such protected species. Familiarity with SalmonSafe standards is desirable.

The irrigation system at the project site is over 50 years old and much of it is original. It is desirable to have experience operating a golf course with an old irrigation system that employs hydraulic valves, for which parts are no longer available, and that involves manual operation of similarly old valves and an old system. Contractor shall describe any related experience in successfully operating a similar irrigation system for a golf course or similar facility.

The irrigation system at the project is old and no record drawings exist. Portions of the course do not receive adequate watering via the existing system. Some areas of the course require hand watering year round; supplemental hand watering during warm weather is needed for greens and other areas. The irrigation system is prone to breaks or failures, which are unpredictable but estimated to be at least monthly, and necessitate immediate repair. Related experience is desirable. Contractor shall describe any related experience in successfully operating a golf course or similar facility, with a comparable undocumented and/or aging irrigation system that involves similar efforts to operate.

Contractor must have a licensed Pest Control Advisor on staff to review and recommend pesticide applications. Contractor must have a staff member with a current Qualified Applicator License or Qualified Applicator Certificate that will personally oversee application of acceptable herbicides or pest control applications.

Contractor must provide evidence of having received training on current Integrated Pest Management (IPM) techniques and ability to comply with City of Cupertino IPM program goals, objectives and reporting. Knowledge of City of Cupertino's specific IPM program and procedures is desirable. Indicate your firm's knowledge/experience as applicable.

Contractor must employ a Golf Course Superintendents Association of America (GCSAA) Class "A" golf superintendent with 5 or more years of successful experience in managing daily maintenance operation of a golf course in a climate that is similar to Cupertino's. It is desirable to have training equivalent to graduation from an accredited 4-year college or university, preferably with major course work in management, horticulture, or a related field. Provide information regarding the superintendent's professional education and experience and provide a current resume.

It is desirable that Contractor have a golf irrigation auditor on staff to monitor irrigation operations. Indicate your firm's golf irrigation auditor if applicable.

Summarize similar project experience below and provide the detailed project information requested:



**Contractor's Name:** \_\_\_\_\_

CONTRACTOR is encouraged to provide additional project and experience references if available.  
Attach extra pages to provide the requested information as needed.

**Project No. 1, Golf Course Maintenance Contract, at or above \$ 175,000 in annual cost.**

| Project name | Annual Cost (\$) | Year completed |
|--------------|------------------|----------------|
|              |                  |                |

Location: \_\_\_\_\_

Owner name, address and phone no: \_\_\_\_\_

Owner's Project Mgr./Course Mgr. (name and phone number): \_\_\_\_\_

Work Performed Similar to Project: \_\_\_\_\_

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**Project No. 2, Golf Course Maintenance Contract, at or above \$ 175,000 in annual cost.**

| Project name | Annual Cost (\$) | Year completed |
|--------------|------------------|----------------|
|              |                  |                |

Location: \_\_\_\_\_

Owner name, address and phone no: \_\_\_\_\_

Owner's Project Mgr./Course Mgr. (name and phone number): \_\_\_\_\_

Work Performed Similar to Project: \_\_\_\_\_

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Contractor's Name: \_\_\_\_\_

**Project No. 1, Experience Maintaining Golf Course Adjacent/Draining to Creek/River/ Water Body with Chinook/Steelhead/protected fish species.**

| Project name | Annual Cost (\$) | Year completed |
|--------------|------------------|----------------|
|              |                  |                |

Location: \_\_\_\_\_

Owner name, address and phone no: \_\_\_\_\_

Owner's Project Mgr./Course Mgr. (name and phone number): \_\_\_\_\_

Work Performed Similar to Project; describe related experience & practices that accommodate protected fish; describe familiarity with Salmon Safe standards if applicable: \_\_\_\_\_

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**Project No. 1, Desirable Experience: Maintaining Golf Course or Similar Facility with Hydraulic Valves and Manual Operation of Irrigation System**

| Project name | Annual Cost (\$) | Year completed |
|--------------|------------------|----------------|
|              |                  |                |

Location: \_\_\_\_\_

Owner name, address and phone no: \_\_\_\_\_

Owner's Project Mgr./Course Mgr. (name and phone number): \_\_\_\_\_

Similar Work Performed; describe related experience operating an old golf irrigation system with hydraulic valves and manual operation of old valves/old system or a similar one; describe related practices to accommodate this: \_\_\_\_\_

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Contractor's Name: \_\_\_\_\_

**Project No. 1, Desirable Experience: Maintaining Golf Course or Similar Facility with Old / Failing Irrigation System** (requires hand watering year round; prone to failure; undocumented layout/equipment/material)

| Project name | Annual Cost (\$) | Year completed |
|--------------|------------------|----------------|
|              |                  |                |

Contractor shall describe any related experience in successfully operating a golf course with a similar undocumented and/or aging irrigation system that involves similar efforts to operate.

Location: \_\_\_\_\_

Owner name, address and phone no: \_\_\_\_\_

Owner's Project Mgr./Course Mgr. (name and phone number): \_\_\_\_\_

Similar Work Performed; describe related experience operating an old or failing golf irrigation system that is undocumented, prone to frequent breaks and failures, involves significant ongoing hand-watering due to system deficiencies, or similar system; describe related practices to accommodate this: \_\_\_\_\_

### TRAINING ON CURRENT INTEGRATED PEST MANAGEMENT TECHNIQUES

Describe your staff's recent training/education and knowledge of current appropriate Integrated Pest Management (IPM) techniques suitable for the setting: \_\_\_\_\_

Describe your firm's knowledge of or experience with City of Cupertino's IPM program and procedures. Discuss your ability to support Cupertino's IPM goals, objectives and reporting: \_\_\_\_\_

**Contractor's Name:** \_\_\_\_\_

## **BIDDER'S PROPOSED KEY PERSONNEL**

Bidder shall provide a current detailed resume, and specific information, as listed below, for each named Key Personnel of Bidder.

**Project Manager:** \_\_\_\_\_

Years of Employment with Bidder's Firm: \_\_\_\_\_

Years of experience: \_\_\_\_\_

Education – degrees obtained, schools and years \_\_\_\_\_

Professional registrations, licenses, certifications, GCSAA membership status \_\_\_\_\_

Two client reference names, firm/organization, location/project, and phone nos: \_\_\_\_\_

**Project Superintendent:** \_\_\_\_\_

Years of Employment with Bidder's Firm: \_\_\_\_\_

Years of experience: \_\_\_\_\_

Education – degrees obtained, schools and years: \_\_\_\_\_

Professional registrations, licenses, certifications, GCSAA membership status \_\_\_\_\_

Two client reference names and phone nos: \_\_\_\_\_

**Staff Member** that is licensed **Pest Control Advisor:** \_\_\_\_\_

**Staff Member** with current **Qualified Applicator License or Certificate:** \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

**PART D  
BIDDER REGISTRATION**

**BIDDER CERTIFIES, UNDER PENALTY OF PERJURY, THAT THE FOREGOING INFORMATION IN THIS DOCUMENT 00450 IS CURRENT AND ACCURATE AND AUTHORIZES THE CITY OF CUPERTINO AND ITS AGENTS AND REPRESENTATIVES TO OBTAIN A CREDIT REPORT AND/OR VERIFY ANY OF THE ABOVE INFORMATION.**

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
date

**END OF DOCUMENT**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF )

Executed under penalty of perjury under the laws of the State of California:

(Signature of Principal)

(Seal)

(If Bidder's affidavit on this form is made outside the State of California, the official position of the person taking such affidavit shall be certified according to law.)

## Non-Collusion Affidavit

**BIDDER CERTIFICATIONS**

**CITY OF CUPERTINO  
BLACKBERRY FARM GOLF COURSE MAINTENANCE 2016**

The undersigned Bidder certifies to the City of Cupertino as set forth in sections 1 through 7 below.

**1. STATEMENT OF CONVICTIONS**

By my signature hereunder, I hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Bidder within the past two years because of failure to comply with an order of a Federal Court or to comply with an order of the National Labor Relations Board.

**2. CERTIFICATION OF WORKER'S COMPENSATION INSURANCE**

By my signature hereunder, as the Bidder, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

**3. CERTIFICATION OF PREVAILING WAGE RATES AND RECORDS**

By my signature hereunder, as the Bidder, I certify that I am aware of the provisions of Section 1773 of the California Labor Code, which requires the payment of prevailing wage on public projects. Also, that the Bidder and any sub bidders under the Bidder shall comply with California Labor Code §1776, regarding wage records, and with California Labor Code §1777.5, regarding the employment and training of apprentices. It is the Bidder's responsibility to ensure compliance by any and all subcontractors performing work under this Contract.

**4. CERTIFICATION OF COMPLIANCE WITH PUBLIC WORKS CHAPTER OF LABOR CODE**

By my signature hereunder, as the Bidder, I certify that I am aware of Sections 1777.1 and 1777.7 of the California Labor Code and Bidder and Subcontractors are eligible to bid and work on public works projects.

**5. CERTIFICATE OF NON-DISCRIMINATION**

By my signature hereunder, on behalf of the Bidder making this Bid, the undersigned certifies that there will be no discrimination in employment with regard to race, color, religion, gender, sexual orientation, age or national origin; that all federal, state, and local directives and executive orders regarding non-discrimination in employment will be complied with; and that the principle of equal opportunity in employment will be demonstrated positively and aggressively.

**6. CERTIFICATION REGARDING PREVIOUS DISQUALIFICATIONS**

By my signature hereunder, I hereby swear, under penalty of perjury, that the below indicated Bidder, any officer of such Bidder, or any employee of such Bidder who has a proprietary interest in such Bidder, has never been disqualified, removed or otherwise prevented from bidding on, or completing a Federal, State, or local government project because of a violation of law or a safety regulation except as indicated on the separate sheet attached hereto entitled "Previous Disqualifications." If such exceptions are attached, please explain the circumstances.

**7. CERTIFICATION OF ADEQUACY OF CONTRACT AMOUNT**

By my signature hereunder, as the Contractor, pursuant to Labor Code Section 2810(a), I certify that, if awarded the Contract based on the undersigned's Bid, the Contract will include funds sufficient to allow the Contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. I understand that the City will be relying on this certification if it awards the Contract to the undersigned.

**BIDDER:**

\_\_\_\_\_  
(Name of Bidder)

Date: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
(Signature)

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

Its: \_\_\_\_\_  
(Title)

**END OF DOCUMENT**



**SAMPLE CONTRACT**

**AGREEMENT BETWEEN THE CITY OF CUPERTINO AND \_\_\_\_\_  
FOR BLACKBERRY FARM GOLF COURSE MAINTENANCE**

THIS AGREEMENT, for reference dated\_\_\_\_\_, 2015, is by and between CITY OF CUPERTINO, a municipal corporation (hereinafter referred to as "City"), and , a \_\_\_\_\_ (California corporation, partnership, sole proprietor, individual) whose address is hereinafter called the Contractor, and is made with reference to the following:

**RECITALS:**

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the Constitution and the statutes of the State of California and the Cupertino Municipal Code.

B. City and Contractor desire to enter into an agreement for Blackberry Farm Golf Course Maintenance, in accordance with the Technical Provisions, General and Special Conditions, and Special Environmental Conditions (Exhibit A).

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM:**

The Contractor shall begin work within ten (10) working days after receiving notice from the Engineer to commence the work, and shall diligently prosecute the work to completion.

2. **SERVICES TO BE PERFORMED:**

Contractor agrees, at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all work strictly in accordance with the Technical Provisions, General and Special Conditions, and Special Environmental Conditions are hereby referred to and expressly made a part hereof with the same force and effect as if the same were fully incorporated herein.

3. **COMPENSATION TO CONTRACTOR:**

Contractor shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Contractor's bid, which is attached hereto as Exhibit "A" and incorporated herein by this reference. Payment will be made in the same manner that claims of a like character are paid by the City, with checks drawn on the treasury of the City, to be taken from the fund as indicated in the city's adopted budget.

4. **TIME IS OF THE ESSENCE:**

Contractor and City agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE:**

Contractor agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

6. **INDEPENDENT PARTIES:**

City and Contractor intend that the relationship between them created by this Agreement is that of employer-independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Contractor, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Contractor assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Contractor shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Contractor.

8. **NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Contractor or Contractor's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS:**

Contractor shall, to the fullest extent allowed by law, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers against any and all liability, claims, stop notices, actions, causes of action or demands whatsoever from and against any of them,

including any injury to or death of any person or damage to property or other liability of any nature, arising out of, pertaining to, or related to the performance of this Agreement by Contractor or Contractor's employees, officers, officials, agents or independent contractors. Contractor shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in these sections from each and every subcontractor or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this agreement. If Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section.

10. **INSURANCE:**

On or before the commencement of the terms of this Agreement, Contractor shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraph 10A, B, C and D. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Cupertino by certified mail, "Attention: City Manager." It is agreed that Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates. Contractor to complete the attached Document 00530 Insurance Forms.

A. **COVERAGE:**

Contractor shall maintain the following insurance coverage:

- (1) **Workers' Compensation:**  
Statutory coverage as required by the State of California; Employers' Liability  
\$1,000,000 per occurrence
- (2) **General Liability:**  
Commercial general liability coverage in the following minimum limits:  
Bodily Injury:                   \$500,000  
  each occurrence  
  \$1,000,000  
  aggregate - all other  
Property Damage:           \$500,000 each occurrence  
  \$1,000,000 aggregate  
If submitted, combined single limit of \$1,000,000 per occurrence; \$2,000,000 in

the aggregate will be considered equivalent to the required minimum limits shown above.

(3)

**Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily injury: \$500,000 each occurrence

Property Damage: \$500,000 each occurrence

or

Combined Single Limit: \$1,000,000 each occurrence

**B. SUBROGATION WAIVER:**

Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance.

**C. FAILURE TO SECURE:**

If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

**D. ADDITIONAL INSURED:**

City, its City Council, boards and commissions, officers, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

**E. SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

11. **BONDS:**

Not applicable.

12. **PROHIBITION AGAINST TRANSFERS:**

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Contractor.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Contractor is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL:**

Unless prior written consent from City is obtained, only those people and subcontractors whose names are listed in Contractor's bid shall be used in the performance of this Agreement.

Requests for additional subcontracting shall be submitted in writing, describing the scope of work to be subcontracted and the name of the proposed subcontractor. Such request shall set forth the total price or hourly rates used in preparing estimated costs for the subcontractor's services. Approval of the subcontractor may, at the option of City, be issued in the form of a Work Order.

In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general and automobile liability insurance in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

14. **PERMITS AND LICENSES:**

Contractor, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License, that may be required in connection with the performance of services hereunder.

15. **REPORTS:**

Each and every report, draft, work product, map, record and other document reproduced, prepared or caused to be prepared by Contractor pursuant to or in connection with this Agreement shall be the exclusive property of City. Consultant may retain a copy of any report furnished to the City pursuant to this Agreement.

No report, information nor other data given to or prepared or assembled by Contractor

pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by City.

Contractor shall, at such time and in such form as City may require, furnish reports concerning the status of services required under this Agreement.

16. **RECORDS:**

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement.

Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Contractor shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. **NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Contractor to City shall be addressed to City at:

City of Cupertino  
10300 Torre Avenue  
Cupertino CA 95014  
Attention: Carol Atwood, Director of Recreation and Community Services

All notices, demands, requests, or approvals from City to Contractor shall be addressed to Contractor at:

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

**18. URBAN RUNOFF MANAGEMENT:**

The Contractor shall avoid creating excess dust when breaking asphalt or concrete and during excavation and grading or other activities that may create dust or erosion. If water is used for dust control, contractor shall use as little as necessary. Contractor shall take all steps necessary to keep wash water out of the streets, gutters and storm drains.

The Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

A. Use storm drain inlet protection devices such as sand bag barriers, filter fabric fences, block and gravel filters. (Block storm drain inlets prior to the start of the rainy season (October 15), in site de-watering activities and saw-cutting activities; shovel or vacuum saw-cut slurry and remove from the site).

B. Cover exposed piles of soil or construction material with plastic sheeting. All construction materials must be stored in containers.

C. Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain as well as at the end of the each work day. At the completion of the project, the street shall be washed and the wash water shall be collected and disposed of offsite in an appropriate location.

D. After breaking old pavement, Contractor shall remove all debris to avoid contact with rainfall or runoff.

E. Contractor shall maintain a clean work area by removing trash, litter, and debris at the end of each work day. Contractor shall also clean up any leaks, drips, and other spills as they occur.

The objective is to ensure that the City and County of Santa Clara County-Wide Clean Water Program is adequately enforced. These controls should be implemented prior to the start of construction, up-graded as required, maintained during construction phases to provide adequate protection, and removed at the end of construction.

These recommendations are intended to be used in conjunction with the State's Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, Section 7.1.01 of the Standard Specifications and any other appropriate documents on storm water quality controls for construction.

Failure to comply with this program will result in the issuance of noncompliance notices, citations, project stop orders or fines. The fine for noncompliance of the above program is two hundred and fifty dollars (\$250.00) per occurrence per day. The State under the Federal Clean Water Act can also impose a fine on the contractor, pursuant to Cal. Water Code '13385.

**19. TERMINATION:**

In the event Contractor fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) days after receipt by Contractor from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, City may terminate the Agreement forthwith by giving to the

Contractor written notice thereof.

City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Contractor as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

**20. COMPLIANCES:**

Contractor shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City. Specifically, and without limitation, Contractor shall comply with all state, federal, or local regulation regarding the removal and disposal of hazardous waste.

A. **PREVAILING WAGES:** To the extent applicable, Contractor shall comply with the City's Labor Compliance Program and all other requirements set forth in Labor Code section 1770 et seq. Contractor shall pay prevailing wages. Contractor will submit monthly certified payroll records to the City for all employees and subcontractors in a preapproved format or a City provided form. Any delay in remitting certified payroll reports to the City upon request from the City will result in either delay and/or forfeit of outstanding payment to Contractor.

B. **WORKING DAY:** Contractor shall comply with California Labor Code Section 1810, et seq. which provides that work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, must be compensated as overtime, at not less than 1 ½ times the basic rate of pay, to the extent applicable.

C. **PAYROLL RECORDS:** Contractor shall comply with California Labor Code Section 1776 which requires certified payroll records be maintained with 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 by him or her in connection with this Agreement, to the extent applicable. The Payroll Records shall be made available for inspection as provided in California Labor Code Section 1776.

D. **APPRENTICES:** Contractor shall comply with California Labor Code Section 1777.5 regarding apprentices, to the extent applicable.

**21. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Santa Clara, State of California.



22. **ADVERTISEMENT:**

Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

23. **WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. **INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Contractor.

25. **INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

26. **CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

P.O. No.: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

CONTRACTOR  
\_\_\_\_\_[Name of Contractor]\_\_\_\_\_

CITY OF CUPERTINO  
A Municipal Corporation

By\_\_\_\_\_

By\_\_\_\_\_

Timm Borden, Director of Public Works

Name\_\_\_\_\_

Date\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_

RECOMMENDED FOR APPROVAL:

By\_\_\_\_\_

Address\_\_\_\_\_

Title\_\_\_\_\_

APPROVED AS TO FORM:

By\_\_\_\_\_

Carol Korade, City Attorney

ATTEST:

\_\_\_\_\_  
Grace Schmidt, City Clerk

Contract Amount: \_\_\_\_\_

Account No. : \_\_\_\_\_

DOCUMENT 00510

## INSURANCE FORMS

### INSURANCE FORMS INSTRUCTIONS

**FOR ITEMS 3, 4 AND 5, THE FORMS PROVIDED BY THE CITY OF CUPERTINO MUST BE USED. FORMS OTHER THAN THESE WILL NOT BE ACCEPTED.**

**ALL DOCUMENTS MUST BE ORIGINALS - SUBMIT IN TRIPPLICATE**

1. Insurance Agreement - **Must** be signed by Contractor.
2. Certificate of Insurance to the City of Cupertino - **must** be completed by the insurance agent or **must** provide a certificate on the company's form. They **must** contain the same information.
3. Endorsement of Additional Insured and Primary Insurance and Notice of Cancellation - **must** be signed by the insurance agent for general liability and automobile liability only.
4. Comprehensive general liability/commercial general liability endorsement of aggregate limits of insurance per project - **must** be signed by the insurance agent for general liability only.
5. Waiver of subrogation endorsement worker's compensation insurance - **must** be signed by the insurance agent for worker's compensation only.



## INSURANCE AGREEMENT

- A. Contractor is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's compensation or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Contract.
- B. Contractor and all subcontractors will carry worker's compensation insurance for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the City, the City's officers, agents and employees and shall issue an endorsement to the policy evidencing same.
- C. Contractor shall carry at all times, on all operations hereunder, commercial general liability insurance, and automobile liability insurance. All insurance coverage shall be in amounts required by the City and shall be evidenced by the issuance of a certificate in a form prescribed by the City and shall be underwritten by insurance companies satisfactory to the City for all operations, sub-contract work, contractual obligations, product or completed operations, all owned vehicles and non-owned vehicles. Said insurance coverage obtained by the Contractor, excepting worker's compensation coverage, shall name the City, its engineer, and each of its directors, officers, agents and employees, as determined by the City, as additional insureds on said policies. Insurers must be licensed to do business in the State of California. The Insurers must also have an "A" policyholder's rating and a financial rating of at least Class VII in accordance with the current Best's Guide Rating or that is otherwise acceptable to the City.
- D. Before Contractor performs any work at, or prepares or delivers materials to, the site of construction, Contractor shall furnish certificates of insurance evidencing the foregoing insurance coverages and such certificates shall provide the name and policy number of each carrier and policy and that the insurance is in force and will not be canceled or modified without thirty (30) days written notice to the City. Contractor shall maintain all of the foregoing insurance coverages in force until the work under this Contract is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of the City by Contractor under this Contract and for the duration of the warranty period. Notwithstanding nor diminishing the obligations of Contractor with respect to the foregoing, Contractor shall maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and having a Best's Guide Rating of A, Class VII or better or that is otherwise acceptable to the City.

## LIMITS

Worker's Compensation  
& Employers' Liability

In accordance with the Worker's Compensation Act of the State of California – Worker's comp "statutory" per CA Law; Employers' Liability \$1,000,000 per occurrence.

General Liability - commercial general liability; including provisions for contractual liability, personal injury, independent contractors and products – completed operations hazard.

Combined single limit of \$1.0 million per occurrence; \$2.0 million in the aggregate

Automobile Liability - comprehensive covering owned, non-owned and hired automobiles.

Combined single limit of \$1.0 million per occurrence.

\_\_\_\_\_  
(Contractor's Name)

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

Dated: \_\_\_\_\_ 20\_\_



## CERTIFICATE OF INSURANCE TO THE CITY OF CUPERTINO

This certifies to the City of Cupertino that the following described policies have been issued to the insured named below and are in force at this time.

Insured: \_\_\_\_\_

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

Description of operations/locations/products insured (show contract name and/or number, if any):

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

### WORKER'S COMPENSATION

\* Statutory Min.

\* Employer's  
Liability

\_\_\_\_\_  
(name of insurer)

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

Insurance Company's State License No. \_\_\_\_\_

Check Policy Type:

Each Occurrence

\$ \_\_\_\_\_

### COMPREHENSIVE GENERAL LIABILITY

☐ Premises/Operations

General Aggregate  
(if applicable)

\$ \_\_\_\_\_

☐ Owners & Contractors  
Protective

Aggregate

\$ \_\_\_\_\_

☐ Contractual for Specific  
Contract

Personal Injury

\$ \_\_\_\_\_

☐ Products Liability

☐ XCU Hazards

☐ Broad Form P.D.

Fire Damage (any one fire)

\$ \_\_\_\_\_

☐ Severability of Interest  
Clause

☐ Personal Injury with  
Employee Exclusion Removed  
or

Medical Expense  
(any one person)  
Self-Insured

\$ \_\_\_\_\_

### COMMERCIAL GENERAL LIABILITY

Retention

\$ \_\_\_\_\_

\_\_\_\_\_  
(name of insurer)

Policy No. \_\_\_\_\_

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

AUTOMOTIVE/VEHICLE LIABILITY  
Commercial Form  
Liability Coverage

BODILY INJURY  
Each Person

PROPERTY DAMAGE  
Each Accident

\$ \_\_\_\_\_  
Each Accident

\$ \_\_\_\_\_

\_\_\_\_\_  
(name of insurer)

\$ \_\_\_\_\_

or

Combined Single Limit

\$ \_\_\_\_\_

Policy No. \_\_\_\_\_ Expiration Date \_\_\_\_\_

**BUILDER'S RISK "ALL RISK"**

This is to certify that the following policy has been issued by the below-stated company in conformance with the requirements of the project documents and is in force at this time.

N/A

\_\_\_\_\_  
(Name of insurer)

Policy No. \_\_\_\_\_

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

Limits of Liability: \_\_\_\_\_

Deductible: \_\_\_\_\_

\_\_\_\_\_  
(agent's initial)

A copy of all Endorsements to the policy(ies) which in any way  
limit the above-listed types of coverage are attached to this

Certificate of Insurance.

This Certificate of Insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or any other document with respect to which this Certificate of Insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

IT IS HEREBY CERTIFIED that the above policy(ies) provide liability insurance as required by the Agreement between the City and the insured.

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

Dated: \_\_\_\_\_ 20\_\_\_\_

Attach Certificate of Insurance and Additional Insured Endorsement on company forms.



**ADDITIONAL INSURED ENDORSEMENT  
and  
ENDORSEMENT OF PRIMARY INSURANCE  
and  
NOTICE OF POLICY  
CANCELLATION ENDORSEMENT**

Project Title and Number: \_\_\_\_\_

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

The City of Cupertino ("City") and its directors, officers, engineers, agents and employees, and all public agencies from whom permits will be obtained and their directors, officers, engineers, agents and employees, and the State of California, and its officers, agents and employees, are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of the Contractor at or upon any of the premises of the City in connection with the Contract with the City, or acts or omissions of the additional insureds in connection with, but limited to its general supervision or inspection of said operations.

The insurance afforded by this policy is primary insurance, and no additional insurance held or owned by the designated additional insured(s) shall be called upon to cover a loss under said additional policy.

**Cancellation Notice.** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits, or materially altered, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Cupertino ("City"). Such notice shall be addressed to the City as indicated below.

**POLICY INFORMATION**

1. Insurance Company: \_\_\_\_\_
2. Insurance Policy Number: \_\_\_\_\_
3. Effective Date of this Endorsement: \_\_\_\_\_ 20 \_\_\_\_
4. Insured: \_\_\_\_\_

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and these Endorsements, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, \_\_\_\_\_ (print/type name)  
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.



Signature of Authorized Representative: \_\_\_\_\_  
(Original signature required on all Endorsements furnished to the District)

Names of  
Agent/Agency: \_\_\_\_\_ Title: \_\_\_\_\_

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

\_\_\_\_\_ Facsimile: \_\_\_\_\_



**COMPREHENSIVE GENERAL LIABILITY  
COMMERCIAL GENERAL LIABILITY  
ENDORSEMENT OF AGGREGATE LIMITS OF  
INSURANCE PER PROJECT**

Project Title and Number: \_\_\_\_\_

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is as follows:

This Endorsement modifies the insurance provided under the General Liability Coverage part of the below-referenced policy of insurance.

The general aggregate limit under LIMITS OF INSURANCE applies separately to the project described as \_\_\_\_\_

**POLICY INFORMATION**

1. Insurance Company: \_\_\_\_\_
2. Insurance Policy Number: \_\_\_\_\_
3. Effective Date of this Endorsement: \_\_\_\_\_ 20 \_\_\_\_
4. Insured: \_\_\_\_\_
5. Additional Insured: City of Cupertino, its directors, officers, agents and employees.

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, \_\_\_\_\_ (print/type name)  
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: \_\_\_\_\_  
(Original signature required on all Endorsements furnished to the District)

Names of  
Agent/Agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_



## WAIVER OF SUBROGATION ENDORSEMENT WORKER'S COMPENSATION INSURANCE

Project Title and Number: \_\_\_\_\_

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this Endorsement is attached or any other Endorsement attached thereto, it is agreed as follows:

It is agreed that with respect to such insurance as is afforded by the policy, the Insurance Company waives any right of subrogation against the City of Cupertino, and each of its directors, officers, agents, consultants and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured, arising out of the performance of the above-referenced Contract.

### POLICY INFORMATION

1. Insurance Company: \_\_\_\_\_
2. Insurance Policy Number: \_\_\_\_\_
3. Effective Date of this Endorsement: \_\_\_\_\_ 20 \_\_\_\_\_
4. Insured: \_\_\_\_\_

All notices herein provided to be given by the Insurance Company to the City in connection with this policy and this Endorsement, shall be mailed to or delivered to the City at 10300 Torre Avenue; Cupertino, California 95014.

I, \_\_\_\_\_ (print/type name)  
warrant that I have authority to bind the below listed Insurance Company and by my signature hereon do so bind this Company.

Signature of Authorized Representative: \_\_\_\_\_  
(Original signature required on all Endorsements furnished to the District)

|                                 |                  |
|---------------------------------|------------------|
| Names of<br>Agent/Agency: _____ | Title: _____     |
| Address: _____                  | Telephone: _____ |
| _____                           | Facsimile: _____ |

END OF DOCUMENT

**SUBSTITUTION REQUEST FORM**

To: The City of Cupertino,  
A Municipal Corporation of the State of California ("City")

Project: Blackberry Farm Golf Course Maintenance 2016

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

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

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

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

| <u>Section</u> | <u>Paragraph</u> | <u>Specified Item</u> |
|----------------|------------------|-----------------------|
| _____          | _____            | _____                 |
| _____          | _____            | _____                 |

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

The undersigned encloses the information required herein. If this Document 00660 is being submitted by a Bidder wishing to use "or equal" item(s) as provided in Document 00200 (Instructions to Bidders), the undersigned Bidder must also enclose the technical information (other than cost) otherwise required for a post-Award of Contract Request for Substitution ("RFS") under Section 00700 (General Conditions). However, If this Document 00660 is being submitted under provisions of Contract Documents after Award of Contract, the undersigned Contractor must include all information required under Section 00700 (General Conditions).

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

A. Does the substitution affect dimensions shown on Drawings?

\_\_\_\_\_

B. Are the manufacturer's guarantees and warranties on the proposed substitution items identical to those on the specified items? If there are differences, please specify each and every difference in detail.

\_\_\_\_\_

C. What effect does the substitution have on other contractors, trades, or suppliers?

\_\_\_\_\_

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

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

The undersigned Bidder certifies that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item.

Submitted by:

\_\_\_\_\_  
Bidder/Contractor  
[note applicable]

For Use by City:

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name

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

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

\_\_\_\_\_  
Address

Remarks: \_\_\_\_\_

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

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

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

\_\_\_\_\_

\_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00700**  
**GENERAL CONDITIONS**  
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## ABBREVIATIONS AND DEFINITIONS

Whenever in these Specifications and other Contract Documents the following abbreviations and terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

### ABBREVIATIONS--General

|          |   |
|----------|---|
| AA       | Aluminum Association  |
| AABC     | Associated Air Balance Council  |
| AAMA     | American Architectural Manufacturers Association                          |
| AAN      | American Association of Nurserymen  |
| AAP      | Affirmative Action Program  |
| AASHTO   | American Association of State Highway and Transportation Officials        |
| ACI      | American Concrete Institute   |
| ACPA     | American Concrete Pipe Association  |
| ACS      | Acoustical Society of America   |
| AFPA     | American Forest and Paper Assoc.  |
| AGA      | American Gas Association  |
| AHA      | American Hardboard Association  |
| AI       | Asphalt Institute   |
| AIA      | American Institute of Architects  |
| A.I.A.   | American Insurance Association  |
| AIHA     | American Industrial Hygiene Association                                   |
| AISI     | American Iron and Steel Institute   |
| AIEE     | American Institute of Electrical Engineers                                |
| AISC     | American Institute of Steel Construction                                  |
| AISI     | American Iron and Steel Institute   |
| AITC     | American Institute of Timber Construction                                 |
| ALSC     | American Lumber Standards Committee                                       |
| AMCA     | Air Movement and Control Association                                      |
| ANSI     | American National Standards Institute                                     |
| APA      | American Plywood Association  |
| APHA     | American Public Health Association  |
| API      | American Petroleum Institute  |
| AREA     | American Railway Engineering Association                                  |
| ARI      | Air Conditioning and Refrigeration Institute                              |
| ARMA     | Asphalt Roofing Manufactures Association                                  |
| ASC      | Adhesive and Sealant Council  |
| ASCE     | American Society of Civil Engineers                                       |
| ASHRAE   | American Society of Heating, Refrigerating and Air Conditioning Engineers |
| ASME     | American Society of Mechanical Engineers                                  |
| ASPE     | American Society of Plumbing Engineers                                    |
| ASTM     | American Society of Testing and Materials                                 |
| AWG      | American Wire Gage  |
| AWI      | Architectural Woodwork Institute  |
| AWPA     | American Wood-Preservers' Association                                     |
| AWS      | American Welding Society  |
| AWWA     | American Water Works Association  |
| BAAQMD   | Bay Area Air Quality Management District                                  |
| BHMA     | Builders' Hardware Manufacturers Association                              |
| CAEPA    | California Environmental Protection Agency                                |
| Cal/OSHA | California Occupational Safety and Health Administration                  |
| Caltrans | State of California, Department of Transportation                         |
| CBC      | California Building Code  |
| CCC      | Carpet Cushion Council  |
| CCD      | Construction Change Directive   |
| CCR      | California Code of Regulations  |
| CE       | Corps of Engineers  |

|          |  |
|----------|--|
| CEC      | California Electric Code   |
| CFR      | Code of Federal Regulations  |
| CIH      | Certified Industrial Hygienist   |
| CISPI    | Cast Iron Soil Pipe Institute  |
| CLMFI    | Chain Link Fence Manufacturers Institute   |
| CO       | Change Order   |
| CPM      | Critical Path Method   |
| CPSC     | Consumer Product Safety Commission   |
| CPUC     | California Public Utilities Commission   |
| CRI      | Carpet and Rug Institute   |
| CRSI     | Concrete Reinforcing Steel Institute   |
| CS       | Commercial Standards, U.S. Department of Commerce  |
| CTI      | Ceramic Tile Institute   |
| DHI      | Door and Hardware Institute  |
| DHS      | California Department of Health Services   |
| DIPRA    | Ductile Iron Pipe Research Assoc.  |
| DLPS     | Decorative Laminate Products Assoc.  |
| DOC      | Department of Commerce   |
| DOT      | Department of Transportation   |
| DSA      | Division of State Architect (formerly known as the Office of the State Architect)        |
| EIA      | Electronic Industries Association  |
| EPA      | Environmental Protection Agency  |
| FS       | Federal Specifications   |
| GA       | Gypsum Assoc.  |
| HMA      | Hardwood Manufacturers Assoc.  |
| HSC      | California Health and Safety Code  |
| I.D.     | Identification   |
| IEEE     | Institute of Electrical and Electronics Engineers  |
| IES      | Illuminating Engineering Society   |
| IESNA    | Illuminating Engineering Society of North America  |
| IILP     | International Institute for Lath & Plaster   |
| JATC     | Joint Apprenticeship Training Committee  |
| JV       | Joint Venture  |
| LBE      | Local Business Enterprise  |
| M.I.     | Middle Initial   |
| M/WBE    | Minority and/or Woman-Owned Business Enterprise  |
| MBE      | Minority Business Enterprise   |
| MBMA     | Metal Building Manufacturer's Assoc.   |
| MCAA     | Mechanical Contractors Assoc. of America   |
| MFMA     | Maple Flooring Manufacturers Assoc.  |
| MIA      | Masonry Institute of America   |
| ML/SFA   | Metal Lath/Steel Framing Assoc.  |
| MSDS     | Material Safety Data Sheet   |
| NAAMM    | National Assoc. of Architectural   |
| NBHA     | National Builders Hardware Assoc.  |
| NBS      | National Bureau of Standards   |
| NEC      | National Electric Code   |
| NEII     | National Elevator Industry, Inc.   |
| NEMA     | National Electrical Manufacturers Association  |
| NESC     | National Electrical Safety Code  |
| NFPA     | National Fire Protection Assoc.  |
| N.F.P.A. | National Forest Products Association   |
| NIOSH    | National Institute for Occupational Safety and Health                                    |
| NIST     | National Institute of Science and Technology (formerly the National Bureau of Standards) |
| NFPA     | National Fire Protection Association   |
| NRCA     | National Roofing Contractors Assoc.  |
| NSF      | National Sanitation Foundation   |
| OSHA     | Occupational Safety and Health Administration  |
| OSHPD    | Office of Statewide Health Planning and Department                                       |

|        |   |
|--------|---|
| PCA    | Portland Cement Association                       |
| PCI    | Prestressed Concrete Institute                    |
| PG&E   | Pacific Gas and Electric Company                  |
| PM     | Preventive Maintenance                            |
| PR     | Proposal Request                                  |
| PS     | Product Standard, U. S. Department of Commerce    |
| RFCI   | Resilient Floor Covering Institute                |
| RFI    | Request for Information                           |
| RFIR   | Request for Information Reply                     |
| RFP    | Request for Proposals                             |
| RFS    | Request for Substitution                          |
| RIS    | Redwood Inspection Service                        |
| RMA    | Rubber Manufacturers Assoc.                       |
| RWQCB  | California Regional Water Quality Control Council |
| SAE    | Society of Automotive Engineers                   |
| S.D.I. | Steel Door Institute                              |
| SFM    | State of California, Office of State Fire Marshal |
| SJI    | Steel Joint Institute                             |
| SMACNA | Sheet Metal & Air Conditioning                    |
| SSPC   | Steel Structures Painting Council                 |
| SWI    | Steel Window Institute                            |
| SWRCB  | California State Water Resources Control Council  |
| TCA    | Tile Council of America                           |
| TIE    | Time Impact Evaluation                            |
| UBC    | Uniform Building Code                             |
| UFC    | Uniform Fire Code                                 |
| UL     | Underwriters Laboratories                         |
| UMC    | Uniform Mechanical Code                           |
| UPC    | Uniform Plumbing Code                             |
| USA    | Underground Service Alert                         |
| USC    | United States Code                                |
| USDA   | U.S. Department of Agriculture                    |
| USPS   | U.S. Postal Service                               |
| USEPA  | United States Environmental Protection Agency     |
| WA     | Wallcovering Assoc.                               |
| WCLB   | West Coast Lumber Inspection Bureau               |
| WCLIB  | West Coast Lumber Inspection Bureau               |
| WIC    | Woodwork Institute of California                  |
| WLPDIA | West Coast Lumber Inspection Bureau               |
| WRI    | Wire Reinforcement Institute                      |
| WWPA   | Western Wood Products Association                 |

#### **ABBREVIATIONS—in Specifications**

|        |                          |
|--------|--------------------------|
| AWG    | American Wire Gauge      |
| Accord | Accordance               |
| Co.    | Company                  |
| Corp.  | Corporation              |
| cm.    | centimeter (centimeters) |
| cu.    | Cubic                    |
| Div.   | Division                 |
| dia.   | Diameter                 |
| EA     | each                     |
| ft.    | foot (feet)              |
| g./gr. | gram (grams)             |
| gal.   | gallon (gallons)         |
| gpd    | gallons per day          |
| gpm    | gallons per minute       |
| hr.    | hour                     |

|                |                          |
|----------------|--------------------------|
| kg.            | kilogram (kilograms)     |
| in.            | inch (inches)            |
| Inc.           | Incorporated             |
| km.            | kilometer (kilometers)   |
| Kw             | Kilowatt                 |
| LS             | lump sum                 |
| l.             | liter (liters)           |
| lbs.           | pounds                   |
| M/m            | meter (meters)           |
| Mfg.           | manufacturing            |
| Mg.            | milligram (milligrams)   |
| ml./mls.       | milliliter (milliliters) |
| mm.            | millimeter (millimeters) |
| m <sup>2</sup> | square meter             |
| m <sup>3</sup> | cubic meter              |
| No.            | number                   |
| o.c.           | on centers               |
| O.D.           | outside diameter         |
| Psi            | pounds per square inch   |
| Psf            | pounds per square foot   |
| sq.            | square                   |
| T & G          | tongue and groove        |
| tonne          | metric ton (1000 kg.)    |
| U.S.           | United States            |
| yd.            | yard (yards)             |

## SYMBOLS in Specifications

### [for consideration]

|    |   |
|----|---|
| :  | “shall be” or “shall” - where used within sentences or paragraphs                           |
| #1 | Number  |
| 1# | Pound   |
| &  | And   |
| %  | Percent   |
| C  | Centigrade  |
| F  | Fahrenheit  |
| °  | Degree  |
| /  | per, except where used to combine words; example: power/fuel, and in that case it means and |
| “  | inch (inches)   |
| ‘  | foot (feet)   |
| @  | At  |

## SYMBOLS in Drawings

As indicated therein.

## DEFINITIONS

**Acceptance:** The formal written acceptance by City of a contract which has been completed in all respects in accordance with the Drawings and Specifications and any modifications thereof previously approved.

**Addendum or Letter of Clarification:** A change in the Specifications or Drawings issued prior to the opening of Bids.

**Agency:** City.

**Alternate:** Work added to or deducted from the Base Bid, if accepted by City.

**Application for Payment:** Written application for monthly or periodic progress or final payment made by Contractor complying with the Contract Documents.

**Approved, Directed, Ordered, or Required:** Whenever these words or their derivatives are used, it is the intent, unless otherwise clearly stated, that approval or direction by City is indicated.

**Approved Equal:** Approved in writing by City as being of equivalent quality, utility and appearance.

**Asbestos:** Any material that contains more than one percent asbestosis and is friable or is releasing asbestos fibers into the air above current action levels established by OSHA or Cal/OSHA.

**Attorney or Attorney General:** The attorney selected by City.

**Bid:** The offer or proposal of the Bidder submitted on the proscribed forms setting forth the prices for the Work to be performed.

**Bidder:** Any individual, firm, partnership, corporation or combination thereof, submitting a proposal for the Work contemplated, acting directly or through a duly authorized representative.

**Bidding Documents:** All documents comprising the Project Manual (including all documents and specification sections listed on Document 00010 [Table of Contents]), including documents supplied for bidding purposes only and Contract Documents.

**Board or Council:** City's governing body, its City Council.

**Business Day:** Any Day other than Saturday, Sunday, and the following days that have been designated as holidays by City. If a holiday falls on a Saturday, the preceding Friday will be the holiday. If a holiday falls on a Sunday, the following Monday will be the holiday.

- a. New Year's Day, January 1;
- b. Martin Luther King Jr.'s Birthday, third Monday in January;
- c. Lincoln's Birthday, February 12;
- d. Presidents' Day, third Monday in February;
- e. Memorial Day, last Monday in May;
- f. Independence Day, July 4;
- g. Labor Day, first Monday in September;
- h. Veterans' Day, November 11;
- i. Thanksgiving Day, as designated by the President;
- j. The Day following Thanksgiving Day;
- k. Christmas Day, December 25; and
- l. Each day appointed by the Governor of California and formally recognized by the Santa Clara County Board of Supervisors as a day of mourning, thanksgiving, or special observance.

**By City:** Work that will be performed by City or its agents at the City's expense.

**By Others:** Work that is outside scope of Work to be performed by Contractor under this Contract, which will be performed by City, other contractors, or other means.

**Calendar Day:** Any Day of the year, without exception.

**Change Order:** A written instrument prepared by City and signed by City and Contractor, stating their agreement upon all of the following:

- a. a change in the Work;
- b. the amount of the adjustment in the Contract Sum, if any; and
- c. the amount of the adjustment in the Contract Time, if any.

**Certified Hazardous Materials Testing Laboratory:** A laboratory certified by the California Department of Health Services to perform specific chemical and physical analysis for hazardous materials.

**Certified Industrial Hygienist:** A professional who is certified by the American Council of Industrial Hygienists as trained to evaluate safety and health hazards and determine safety measures necessary for personnel working under hazardous conditions.

**Chief Engineer:** The Program Manager selected by City.

**City:** City of Cupertino, , a Municipal Corporation of the State of California.

**City-Furnished, Contractor-Installed:** Items furnished by City at its cost for installation by Contractor at its cost under Contract Documents.

**City's Representative(s):** See Document 00520 (Contract).

**Claim:** As defined in Section 9 of this Document 00700.

**Code:** Codes of the State of California, including but not limited to, Government Code, Labor Code, etc.

**Concealed:** Work not exposed to view in the finished Work, including within or behind various construction elements.

**Contract:** (Document 00520): Contract is the basic agreement document that binds the parties to construction Work. Contract defines relationships and obligations between City and Contractor and by reference incorporates Standard Provisions, Special Provisions, Drawings and Specifications and contains Addenda and all Modifications subsequent to execution of Contract Documents.

**Construction Change Directive (CCD):** A letter, signed by the City's Director of Public Works, or his designated representative, directing the Contractor to proceed with additive or deductive changes to the contract when that Work or its value is contested by the Contractor. The Work, as directed by a Construction Change Directive, will be completed under the terms of Force Account as explained in Document 00700, General Conditions.

**Construction Equipment:** Equipment used for the performance of Work but not incorporated into the project.

**Construction Manager:** See Document 00520 (Contract) (if this term is used).

**Consulting Engineer:** See Document 00520 (Contract) (if this term is used).

**Contract or Contract Documents:** The written agreement between Contractor and City consisting of the Contract Documents as defined in the Document 00520 (Contract).

**Contract Modification:** Either:

- a. a written amendment to Contract signed by Contractor and City; or
- b. a Change Order.

**Contract Prices:** The prices for the Work set forth in the Contract. Contract Price (or Contract Sum) shall mean the aggregate price for all Work set forth in the Contract.

**Contract Sum:** The sum stated in the Contract and, including authorized adjustments, the total amount payable by City to Contractor for performance of the Work and the Contract Documents. The Contract Sum is also sometimes referred to as the Contract Price or the Contract Amount.

**Contract Time:** The number of days for Substantial Completion and/or Final Completion the Work including any milestones specifically identified in the Contract.

**Contractor:** The entity or person entering a contract with City.

**Contractor's Employees:** Persons engaged in execution of Work under Contract as direct employees of Contractor, as Subcontractors, or as employees of Subcontractors.

**Controlling Item of Work:** Any feature or combination of features of the Work, which if delayed, will delay the time of completion of a contract. Also known as critical work or critical path work.

**County:** The County of Santa Clara, State of California.

**Day:** One calendar day of 24 hours measured from midnight to the next midnight, unless the word "day" is specifically modified to the contrary.

**Defective:** An adjective which, when modifying the word "Work," refers to Work that is unsatisfactory or unsuited for the use intended, faulty, or deficient, that does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents (including but not limited to approval of samples and "or equal" items), or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by City). City is the judge of whether Work is defective.

**Department:** City.

**Director or Director of the Department of Transportation:** City's City Public Works Director.

**District:** City.

**Division:** City.

**Drawings:** The official drawings, Working drawings, detail drawings, and supplemental drawings, or reproductions thereof, which show the location, character, dimensions, and details of the Work to be done, and which are to be considered as part of the Contract.

**Engineer or Engineer of the Department of Transportation:** City of Cupertino and any designated person or entity by City

**Equal:** Equal in opinion of City. Burden of proof of equality is responsibility of Contractor.

**Equipment:** Equipment incorporated or to be incorporated into the project.

**Exposed:** Work exposed to view in the finished Work, including behind louvers, grilles, registers and various other construction elements.

**Field Authorization (FA):** An authorization issued by City to Contractor to allow additive or deductive work to proceed when Change Order process time may delay the Work.

**Final Acceptance:** City's acceptance of the Work as satisfactorily completed in accordance with Contract Documents.

**Final Completion:** Shall be achieved when the entire work is complete, except for minor punch list items, as determined by City.

**Fixed Costs:** Any necessary labor, material, and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of Work done.

**Force Account:** Work directed to be performed without prior agreement as to lump sum or unit price cost thereof, and which is to be billed at cost for labor, materials, equipment, taxes, and other costs, plus a specified percentage for overhead and profit.

**Furnish:** Supply only, do not install.

**Hazardous Material:** (A) Any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to any federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability (including, but not limited to response, removal, and remediation costs) or standards of conduct or performance concerning any hazardous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or as otherwise dangerous waste, substance or material; (B) any substance, product, waste, or other material of any nature whatsoever whose presence in and of itself may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of a state or federal court; (C) any substance without limitation, which contains petroleum or crude oil, including but not limited to, petroleum and petroleum products.

**Hazardous Waste:** Any substance or material, as defined in the California Hazardous Waste Control Act, Health and Safety Code Section 25, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

**Indicated:** Shown or noted on the Drawings.

**Install:** Install or apply only, do not furnish.

**Laboratory:** The independent testing organization or organizations selected by City.

**Latent:** Not apparent by reasonable inspection, including but not limited to, the inspections and research required as a condition to bidding under the General Provisions.

**Law:** Unless otherwise limited, all applicable laws including without limitation all federal, state, and local laws, statutes, standards, rules, regulations, ordinances, and judicial and administrative decisions

**Liquidated Damages:** The amount stated in Document 00520 (Contract), to be paid to City or to be deducted from any payments due or to become due Contractor as provided in the Contract Documents.

**Material:** This word shall be construed to embrace machinery, manufactured articles, materials of construction (fabricated or otherwise), and any other classes of material to be furnished in connection with Contract, except where a more limited meaning is indicated by context.

**Milestone:** A principal event specified in Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all Work.

**Modification:** Same as Contract Modification.

**Not in Contract:** Work that is outside the scope of Work to be performed by Contractor under Contract Documents – shown as NIC.

**Notice of Completion:** Shall have the meaning provided in California Civil Code Section 3093, and any successor statute.

**Off Site:** Outside geographical location of the Project.

**Northern Region:** City.

**Office of Materials and Foundations:** Laboratory.

**Office of Structure Design:** When specifications require working drawings to be submitted to the Office of Structure Design, the drawings shall be submitted to the Resident Engineer.

**Owner:** City.

**Partial Utilization:** Use by City of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all of the Work.

**PCBs:** Polychlorinated biphenyls.

**Personnel Protection:** Equipment and procedures which minimize human exposure to regulated materials, hazardous materials, hazardous wastes, or unsafe situations.

**Phase:** A specified portion of the Work (if any) specifically identified as a Phase in Document 00520 (Contract).

**Plans, Construction Plans:** The Drawings.

**Product Data:** That information (including brochures, catalogue cuts, MSDS, etc.) supplied by the vendor describing the technical and commercial characteristics of the supplier equipment or materials, and accompanying commercial terms such as warranties, instructions and manuals.

**Progress Report:** A periodic report submitted by Contractor to City with progress payment invoices accompanying actual work accomplished to the Progress Schedule. See Document 00700 (General Conditions).

**Project:** The erection, construction, alteration, repair, or improvement to be accomplished under the Contract and performing the Work.

**Project Float:** Neither City nor Contractor owns float. The Project owns the float. As such, liability for delay of any Substantial Completion or Final Completion date rests with the party whose actions, last in time, actually cause delay to a Substantial Completion or Final Completion date.

- A. For example, in the event of unexcused delay by Party A and Party B, and if Party A uses some, but not all of the float and Party B later uses remainder of the float as well as additional time beyond the float, Party B shall be liable for the time that represents a delay to the Substantial Completion date.
- B. Under this scenario, Party A would not be responsible for the time since it did not consume all of the float and additional float remained; therefore, the Substantial Completion Date was unaffected.

**Project Manual:** Project Manual consists of Bidding Requirements, Contract, Bonds, Certificates, Standard Provisions and Special Provisions, and Specifications.

**Project Record Documents:** All Project deliverables required under Section 00700, including without limitation, as-built drawings, operations and maintenance manuals Installation, Operation, and Maintenance Manuals, and Machine Inventory Sheets.

**Provide:** Furnish and install.

**Reasonable Accuracy:** Within the tolerances as shown on the Drawings or indicated in the Specifications.

**Regulated Material:** Any substance or combination of substances for which federal, state, or local regulations require special management, storage, disposal or handling practices. This shall include, but not be limited to, materials defined as: Hazardous Materials and Waste; Designated Wastes (CCR, Title 23, Section 23-2522); and Special Waste (CCR, Title 22, Section 22-66195).

**Request for Information ("RFI"):** A document prepared by Contractor requesting information regarding the Project or Contract Documents. The RFI system is also a means for City to submit Contract Document clarifications or supplements to Contractor.

**Request for Proposals ("RFP"):** A document issued by City to Contractor whereby City may initiate changes in the Work or Contract Time as provided in Contract Documents.

**Request for Substitution ("RFS"):** A document prepared by Contractor requesting substitution of materials as permitted and to the extent permitted in Contract Documents.

**RFI-Reply:** A document consisting of supplementary details, instructions, or information issued by City that clarifies or supplements Contract Documents, and with which Contractor shall comply. RFI-Replies do not constitute changes in Contract Sum or Contract Time except as otherwise agreed in writing by City. RFI-Replies will be issued through the RFI administrative system.

**Remediation:** Restoration of the contaminated soil, groundwater, or other materials to its pre-contaminated level or to a level acceptable to City and local, state and federal agencies.

**Resident Engineer:** Authorized representative for the City. Also identified as Engineer.



**Responsible Bidder:** A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the Work.

**Samples:** Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

**Section:** A numbered portion of a title section of the Specifications.

**Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

**Shown:** As indicated on Drawings.

**Site:** The particular geographical location of Work performed pursuant to Contract Documents.

**Specifications:** The directions, provisions and requirements contained in the Contract Documents, including but not limited to, the State Specifications, Special Provisions, and Technical Provisions.

**Standard Plans:** The Standard Plans, Metric, of the State of California Department of Transportation, July 2004.

**State:** City.

**State Furnished Materials:** Materials furnished by City.

**State of California:** City except where in the context of the Contract Documents it is clear the reference is to the State of California.

**State Specifications (or Standard Specifications):** See Section 1.05 in this Document 00700.

**Special Conditions or Special Provisions:** Document 00800 (Supplemental General Conditions) and Document 00805 (Supplemental Conditions – Hazardous Materials) (if included).

**Standard Provisions:** Document 00700 (General Conditions)

**Subcontractor:** An entity or person contracting with Contractor or another subcontractor to perform any portion of Work.

**Substantial Completion:** The Work (or a specified part thereof) has progressed to the point where, in the opinion of City as evidenced by a Certificate of Substantial Completion and can be utilized for the purpose for which it is intended.

**Supplemental Instruction:** A written directive from City to Contractor ordering alterations or modifications that do not result in change in Contract Sum or Contract Time, and do not substantially change Drawings or Specifications.

**Supplier/Vendor:** A person or entity that has a direct contract with the Contractor or a Subcontractor to provide, fabricate, deliver or install materials, products or assemblies.

**Technical Provisions:** Provisions and or clauses specific to the Work of the Project, generally found in Sections 10 thru 95 of the State Specifications.

**Testing and Special Inspection Agency:** An independent entity engaged by City to inspect and/or test the workmanship, materials, or manner of construction of buildings or portions of buildings, to determine if such construction complies with the Contract Documents and applicable codes.

**Ton:** 2,000 pounds avoirdupois.

**Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: Electricity, gases, chemicals, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

**Unit Price Work:** Shall be the portions of the Work for which a unit price is provided in Document 00520 (Contract).

**Work:** The entire completed construction of the Work or of the various separately identifiable parts thereof required to be furnished under the Contract Documents within the Contract Time. Work includes and is the result of performing or furnishing administrative services, labor and professional services, furnishing and incorporating materials and equipment into the construction, and performing or furnishing construction services and furnishing documents, all as required by the Contract Documents including the Plans and Specifications. Wherever the word “work” is used, rather than the word “Work”, it shall be understood to have its ordinary and customary meaning.

**Work Day:** All Days, other than Saturdays, Sundays, and public holidays, unless specifically modified to the contrary.

Wherever words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood that direction, requirements, or permission of City is intended. Words “sufficient,” “necessary,” “proper,” and the like shall mean sufficient, necessary, or proper in judgment of City. Words “approved,” “acceptable,” “satisfactory,” “favorably

reviewed,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to, or favorably reviewed by City.

Wherever the word “may” or “ought” is used, the action to which it refers is discretionary. Wherever the word “shall” or “will” is used, the action to which it refers is mandatory.

## **SECTION 1. INTERPRETATION OF CONTRACT**

### **1.1 Precedence of Contract**

In resolving conflicting requirements between the Contract Documents order of precedence shall be as follows:

- A Change orders
- B Addenda or Letters of Clarification
- C Document 00510 (Contract)
- D Special Conditions
- E Technical Specifications/Technical Provisions
- F Drawings – Not Applicable
- G General Conditions

### **1.2 Clarification of Contract**

Should it appear that the work to be done or any of the matters relative thereto is not sufficiently detailed or explained in the Specifications or on the Drawings, or if Contractor discovers during the course of the Work any discrepancies between the Contract Drawings and conditions in the field, or any errors or omissions in the Contract or in the layout given by stakes, points, or instructions, the bidder or Contractor shall apply in writing to City for such further explanations as may be necessary and shall conform to them as part of the Contract. Any work done after such discovery until authorized by City, will be done at Contractor’s risk.

All corrections of readily apparent errors or omissions in the Contract may be made by City when such corrections are necessary for the proper fulfillment of their intention as construed by City. The misplacement, addition, or omission of any word, letter, figure, or punctuation mark which has no substantive legal effect will in no way change the due spirit, intent, or meaning of Contract.

### **1.3 Contract Documents Complementary**

Any part of the Work not shown on the Drawings or described in these Specifications but which is reasonably or ordinarily implied by either, shall be furnished and installed by Contractor as if fully described in these Specifications and shown upon the Drawings. All disputes shall be administered under Section 9 herein.

### **1.4 Contract Interpretation**

In the event of any doubt or questions arising respecting the true meaning of the Contract, reference shall be made in writing to City, whose decision thereon shall be final.

### **1.5 State Specifications – Not Applicable**

The Work set forth in these Specifications shall be accomplished in accordance with appropriate provisions of construction details, Section 10 to Section 95, inclusive, of the Standard Specifications of the State of California, Business, Transportation And Housing Agency, Department of Transportation, May, 2006. These Specifications are herein referred to as the State Specifications (or Standard Specifications) and are by reference made a part of these Specifications the same as though set out in full.

### **1.6 Conflicts Involving State Specifications – Not Applicable**

In the event of conflict between the State Specifications and the Standard, Special, or Technical Provisions of these Specifications or the Drawings or any Contract Document other than the State Specifications, then such non-State Specification shall have precedence.

## SECTION 2. BONDS AND INSURANCE

### 2.1 Contractor's Insurance

#### A. General

Contractor shall not perform Work under this Contract unless all insurance required by this Section has been obtained; and such insurance and insurers have been approved by City; and such insurance remains in full force and effect. Approval of insurance by City shall neither relieve nor decrease the liability of Contractor hereunder. Any delay in performing Work caused by Contractor's failure to comply with the insurance requirements specified in these Specifications, is the responsibility of Contractor. Failure by Contractor to maintain all required insurance at all times during the performance of this Contract, and until Final Acceptance by City, shall constitute a material breach of this Contract and shall not be a basis for a time extension.

For insurance requirements and forms see Document 00821 and 00530.

#### B. Workers' Compensation and Liability Insurance

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall, at Contractor's sole cost and expense, keep in force at all times during the performance of this Contract, and until Acceptance by City, the following minimum insurance coverages, unless otherwise specified in the Special Provisions:

For insurance requirements and forms see Document 00821 and 00530.

#### C. Insurance on Work and Materials

Contractor shall secure and maintain such direct damage insurance against such perils as Contractor may deem necessary to protect the Work called for in this Contract including Work completed, material in place or to be used in the performance of this Contract and such other miscellaneous items as may be necessary to the performance of this Contract.

For insurance requirements and forms see Document 00821 and 00530.

#### D. Certificates of Insurance

Contractor shall furnish certificates of insurance to City for all required insurance coverages.

For insurance requirements and forms see Document 00821 and 00530.

### 2.2 Contractor's Bonds –Not Applicable

#### A. Filing of Bonds

At or before the date indicated in Document 00200 (Instructions to Bidders), Contractor shall file with City the following bonds:

1. Corporate surety bond, in the form of Document 00610 (Construction Performance Bond), in the penal sum of 100% of Contractor's Bid as accepted, to guarantee faithful performance of the Work; and
2. Corporate surety bond, in the form of Document 00620 (Construction Labor and Material Payment Bond), in the penal sum of 100% of Contractor's Bid as accepted, to guarantee payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of Contract Documents.
3. The Payment bond will be released six (6) months after the recording of the Notice of Completion, and the Faithful Performance shall be reduced by ninety percent (90%) at the recording of the Notice of Completion. The remaining ten percent (10%) will be released at the end of one (1) year from acceptance of the project provided any deficiencies in the work have been corrected.

**B. Surety Qualifications**

Sureties shall be satisfactory to City. Corporate sureties on these bonds and on bonds accompanying Bids shall be duly licensed to do business in the State of California and shall have an A.M. Best Company financial rating of B+,VII or better.

**SECTION 3. SCOPE OF WORK**

**3.1 Work to be Done**

The Work to be done consists of furnishing all labor, methods or processes, implements, tools, machinery, construction equipment, materials of any kind, and installed manufactured equipment, except as otherwise specified herein, to be furnished by City or from sources provided by City, which are required to construct in a good and worker-like manner all the work herein specified. The intent of the plans and specifications is to describe the details for the construction and completion of the work which Contractor undertakes to perform in accordance with the terms of the contract. Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of first class quality are to be used.

Bidder should take particular notice that any and all items of Work, called for in the Construction Documents, but not included in a description of any specific bid item, shall be considered as included in one (1) or more of the bid items and that no additional compensation for those items of Work, beyond the Base Bid, will be allowed. Work of this nature includes, but is not limited to, such items as flagmen, water, all safety requirements, or work and materials required to provide public convenience and safety, barricades, lights, vehicular detours, and pedestrian walkways.

See Document 00800 for more detail of work and requirements.

**3.2 Cleaning**

Before final inspection Contractor shall clean the premises, and unless otherwise specified remove all rubbish, excess materials, false work, temporary structures, and equipment. All parts of the Work shall be left in a neat and presentable condition to the satisfaction of City. Contractor shall perform final cleanup in phases whenever the work is completed in phases, and/or turned over to City in phases, and/or where the Work is exposed. Additionally, all areas of the work may in any manner interface with the public shall be maintained in a neat, orderly, sanitary, and safe condition, and contractor shall at all times maintain the work area in a neat and orderly condition.

Nothing herein, however, shall require Contractor to remove warning, regulatory, and guide signs prior to Final Acceptance by City.

**A. Progress Cleaning**

Contractor shall perform periodic cleaning to ensure that any streets and other City and public properties are maintained free from accumulation of waste materials, dust, mud, and debris.

Where required, Contractor shall wet down surfaces to lay dust and prevent the blowing of dust to nearby residences or public properties.

Contractor shall keep all streets clean and free of dust, mud, and debris resulting from Contractor's operations. Daily cleanup throughout the job will be necessary as Contractor progresses with its Work, but extra attention to cleanup shall be made prior to weekends and holidays. Without limiting the foregoing, Contractor shall remove trench spoil along traveled ways daily; grade and vacuum broom surfaces initially where applicable and later water flush with high-pressure sprays, being careful to avoid downstream contamination.

All dust, mud, spoils, and construction debris shall be removed daily from all roadways, ditches, shoulders, and private property (fills or spoils placed on private property at private property owner's written request excepted).

Disposal of Materials:

1. As part of the scope of Work included within the Contract Sum, Contractor shall be fully responsible for disposing of all construction debris, dirt and spoils resulting from the Work.
2. All waste materials, debris, dirt and rubbish shall be disposed of at sites to be chosen by Contractor in accordance with applicable local, state, and federal regulations.
3. Contractor is cautioned that the County of Santa Clara and cities within the county have regulations governing the disposal of rubble, broken pavement, and similar materials.
4. Contractor shall become familiarized with the requirements of the agency having jurisdiction over any contemplated disposal site and shall comply with all such requirements.

All excess soil from performance of Work shall be disposed at sites to be chosen by Contractor in accordance with applicable local, state, and federal regulations. If Contractor elects to dispose of soil on any private property, prior to any dumping, a letter allowing such dumping shall be obtained from the property owner and presented to City. Contractor is advised that the property owner is required to obtain a fill permit from the applicable government agency(ies). In addition, placement of fill in wetland areas is subject to permit procedures of the US Army Corps of Engineers. At the completion of Work, a letter from each affected property owner will be required releasing Contractor, Santa Clara County, City and any City consultant from future liability.

If Contractor does not properly clean the Site, in the opinion of City, then City shall have the option of using outside equipment to perform the cleanup and such cost will be withheld from the Contract Sum.

**B. Final Cleaning**

Contractor shall execute final cleaning prior to final inspection, using only properly skilled workers. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials from exposed finished surfaces.

Repair, patch, and touch up marred surfaces to match adjacent finishes.

Clean Site; mechanically sweep paved areas.

Remove waste and surplus materials, rubbish, and construction facilities from Site.

**3.3 Change in Work – Not Applicable**

**A. General**

City may, at any time or from time to time, order additions, deletions, or revisions in the Work, any portion of the Work, unit price item, or the Contract Time. These changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, the adjustment of Contract Time, if any, and the basis of compensation for that work. A contract change order will not become effective until approved by City. Upon receipt of an approved contract change order, Contractor shall proceed with the ordered work. If ordered in writing by the City, Contractor shall proceed with the work so ordered prior to actual receipt of an approved contract change order therefore. In those cases, City will, as soon as practicable, issue an approved contract change order for the ordered work and, if the parties cannot agree, then the contract claims procedure in Section 9 shall apply. When the compensation for an item of work is subject to adjustment, Contractor shall, furnish City with adequate detailed cost data for that item of work showing actual costs incurred with direct costs, indirect costs, and any overhead claims. If Contractor requests an adjustment in compensation for an item of work as provided herein, the cost data shall be submitted with the request.

Any change in scope of Work or deviation from Contract Documents including, without limitation, extra work, or alterations or additions to or deductions from the original Work, shall not invalidate the original Contract, and shall be performed under the terms of the Contract Documents.

Only Contractor or City may initiate changes in scope of Work or deviation from Contract Documents.

Contractor may only initiate changes by submitting RFIs, Notice of Concealed or Unknown Conditions, or Notice of Hazardous Waste Conditions.

RFIs shall be submitted to seek clarification of or request changes in the Contract Documents.

Notices of Concealed or Unknown Conditions shall be submitted in accordance with Document 00700 (General Conditions).

Notices of Hazardous Waste Conditions shall be submitted in accordance with Document 00700 (General Conditions).

Contractor shall be responsible for its costs to implement and administer RFIs throughout the Contract duration. Regardless of the number of RFIs submitted, Contractor shall not be entitled to additional compensation. Contractor shall be responsible for both City and its Engineer's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract Documents, as determined by City; at City's discretion, such costs may be deducted from progress payments or final payment.

City may initiate changes by issuing a Supplemental Instruction, which may revise, add to or subtract from the Work.

City may initiate changes in the Work or Contract Time by issuing RFPs to Contractor. Such RFPs will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Contractor.

City may also, by Construction Change Directive ("CCD"), order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly. A CCD shall be used in the absence of total agreement on the terms of a Change Order and may, upon notice, consist of a Change Order executed by City only.

## **B. Procedures**

### **1. Cost Proposal and Procedures:**

Whenever Contractor is required to prepare a Cost Proposal, and whenever Contractor is entitled to submit a Cost Proposal and elects to do so, Contractor shall prepare and submit to City for consideration a Cost Proposal using the forms approved by the City. All Cost Proposals must contain a complete breakdown of costs of credits, deducts and extras; itemizing materials, labor, taxes, overhead and profit. All Subcontractor Work shall be so indicated. Individual entries on the Cost Proposal form shall be determined as provided in this section. After receipt of a Cost Proposal with a detailed breakdown, City will act promptly thereon.

If City accepts a Cost Proposal, City will prepare Change Order for City and Contractor signatures.

If Cost Proposal is not acceptable to City because it does not agree with cost and/or time included in Cost Proposal, City will submit in a response what it believes to be a reasonable cost and/or adjustment, if any. Except as otherwise provided in this Document, Contractor shall have seven Days in which to respond to City with a revised Cost Proposal.

When necessity to proceed with a change does not allow the City sufficient time to conduct a proper check of a Cost Proposal (or revised Cost Proposal), City may order Contractor to proceed on basis to be determined at earliest practical date. In this event, value of change, with corresponding equitable adjustment to Contract, shall not be more than increase or less than decrease proposed.

**2. Request for Information (RFI):**

Whenever Contractor requires information regarding the Project or Contract Documents, or receives a request for information from a Subcontractor, Contractor may prepare and deliver an RFI to City. Contractor shall use RFI format provided by City. Contractor must submit time critical RFIs at least 30 days before scheduled start date of the affected Work activity. Contractor shall reference each RFI to an activity of Progress Schedule and shall note time criticality of the RFI, indicating time within which a response is required. Contractor's failure to reference RFI to an activity on the Progress Schedule and note time criticality on the RFI shall constitute Contractor's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.

City will respond within seven Days from receipt of RFI with a written response to Contractor. Contractor shall distribute response to all appropriate Subcontractors. RFI received after 12:00 pm will be considered as received the following day, for Fridays, the following day will be considered to be Monday.

If Contractor is satisfied with the response and does not request change in Contract Sum or Contract Time, then the response shall be executed without a change.

If Contractor believes the response is incomplete, Contractor shall issue another RFI (with the same RFI number with the letter "A" indicating if it is a follow-up RFI) to City clarifying original RFI. Additionally, City may return RFI requesting additional information should original RFI be inadequate in describing condition.

If Contractor believes that the response results in change in Contract Sum or Contract Time, Contractor shall notify City in writing within seven Days after receiving the response. If City disagrees with Contractor, then Contractor may give notice of intent to submit a Claim as described in this Document and submit its Claim within 30 days. If City agrees with Contractor, then Contractor must submit a Cost Proposal within 21 Days of receiving the response to the RFI. Contractor's failure to deliver either the foregoing notice and Claim or Cost Proposal by the respective deadlines stated in the foregoing sentences shall result in waiver of the right to file a Cost Proposal or Claim.

**3. Field Authorization (FA):**

A letter issued and signed by the City's Director of Public Works, or his designated representative, authorizing the Contractor to proceed with additive or deductive changes to the contract, exclusive of time extensions, which value does not exceed \$50,000, which will become a part of a subsequent Contract Change Order. The Field Authorization is issued during the course of construction when it is known or believed that the changes in the Work being requested cannot be processed in a timely way as a Contract Change Order without risk of causing a delay to the project. The contractor cannot include work performed under a Field Authorization in an Application for Payment until the Field Authorization is fully incorporated into an approved Contract Change Order.

**4. Supplemental Instruction:**

City may issue Supplemental Instruction to Contractor.

If Contractor is satisfied with Supplemental Instruction and does not request change in Contract Sum or Contract Time, then Supplemental Instruction shall be executed without a Change Order.

If Contractor believes that Supplemental Instruction results in change in Contract Sum or Contract Time, then Contractor must submit a Cost Proposal to City within 21 Days of receiving the Supplemental Instruction.

**5. Construction Change Directives (CCD):**

If at any time City believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, City may issue a CCD with its recommended cost and/or time adjustment. Upon receipt of CCD, Contractor shall promptly proceed with the change of Work involved and concurrently respond to City's CCD within 10 Days.

Contractor's response must be any one of following:

Return CCD signed, thereby accepting City's response, time and cost.

Submit a (revised if applicable) Cost Proposal with supporting documentation (if applicable, reference original Cost Proposal number followed by letter A, B, etc. for each revision), if City so requests.

Give notice of intent to submit a Claim as described in this Document and submit its Claim with 30 days.

If the CCD provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

Unit prices stated in the Contract Documents or subsequently agreed upon.

Cost to be determined in a manner agreed.

CCD signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by City on the basis of reasonable expenditures and savings of those performing the Work attributable to the change including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. If the parties still do not agree on the price for a CCD, Contractor may file a Claim. Contractor shall keep and present, in such form as City may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided in this Section.

Pending final determination of cost to City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by Contractor to City for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by City. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**6. City Requested RFP:**

Contractor shall furnish a Cost Proposal within 21 Business Days of City's RFP. Upon approval of RFP, City will issue a Change Order directing Contractor to proceed with extra Work. If the parties do not agree on the price for an RFP, City may either issue a CCD or decide the issue per the claims section of this Document. Contractor shall perform the changed Work notwithstanding any claims or disagreements of any nature.



**7. Differing Site Conditions:**

Contractor shall submit Notices of Differing Site Conditions to resolve problems regarding differing underground Site conditions encountered in the execution of the Work pursuant to section 3 of this Document, which shall govern. If City determines that a change in Contract Sum or Contract Time is justified, City will issue RFP or CCD.

**8. Hazardous Waste Conditions:**

Contractor shall submit Notices of Hazardous Waste Conditions to resolve problems regarding hazardous materials encountered in the execution of the Work pursuant to this Document, which shall govern. If City determines that a change in Contract Sum or Contract Time is justified, City will issue RFP or CCD.

**9. All Changes:**

Documentation of Change in Contract Sum and Contract Time:

Contractor shall maintain detailed records of Work performed on a time-and-material basis. Contractor shall document each proposal for a change in cost or time with sufficient data to allow evaluation of the proposal.

Contractor shall, on request, provide additional data to support computations for:

- a. Quantities of products, materials, labor and equipment.
- b. Taxes, insurance, and bonds.
- c. Overhead and profit.
- d. Justification for any change in Contract Time and new Progress Schedule showing revision due, if any.
- e. Credit for deletions from Contract, similarly documented.
- f. Contractor shall support each claim for additional costs, and for Work performed on a cost-and-percentage basis, with additional information including:
  - (1) Credit for deletions from Contract, similarly documented.
  - (2) Origin and date of claim.
  - (3) Dates and times Work was performed and by whom.
  - (4) Time records and wage rates paid.
  - (5) Invoices and receipts for products, materials, equipment and subcontracts, similarly documented.

**10. Correlation of Other Items:**

Contractor shall revise Schedule of Values and Application for Payment forms to record each authorized Change Order or CCD as a separate line item and adjust the Contract Sum as shown thereon prior to the next monthly pay period.

Contractor shall revise the Progress Schedules prior to the next monthly pay period.

Contractor shall enter changes in Project Record Documents prior to the next monthly pay period.

**11. Responses:**

For all responses for which the Contract Documents, including without limitation this Document, do not provide a specific time period, recipients shall respond within a reasonable time.

**C. Allowable Quantity Variations**

Increases or decreases in the quantity of a Contract item of Work for unit price items will be determined by comparing the actual pay quantity of an item of Work with the approximate quantity in the listing of the bid items contained in the Bid.

If the actual pay quantity of an item of Work varies from the approximate quantity by 25 percent or less, payment will be made for the actual quantity of Work performed at the Contract unit price listed in the Bid.

If the actual pay quantity of an item of Work varies from the approximate quantity by more than 25 percent, in the absence of an executed Contract Change Order specifying the compensation to be paid, the compensation payable to Contractor will be determined in accordance with this Section.

1. **Increases of More Than 25 Percent:** If the actual pay quantity of an item of Work exceeds the approximate quantity by more than 25 percent, the amount of Work in excess of 125 percent of the approximate quantity will be paid for by adjusting the Contract unit price. Such adjustment of the Contract unit price will be the positive or negative difference between the Contract unit price and the actual unit cost of the total pay quantity of the item. At the sole option of City, the actual unit cost of the Work involved in such excess will be determined in accordance with Section 3.4 (by mutual acceptance of a lump sum amount) or Section 3.4 (cost of Work, based on time and materials).

If the cost of an item of Work includes fixed costs or overhead, the fixed costs will be deemed to have been recovered by Contractor by the payments made for 125 percent of the approximate quantity at the Contract unit price for the item and in computing the actual unit cost, the fixed costs will be excluded.

When the compensation payable for the quantity of Work performed in excess of 125 percent of the approximate quantity is less than \$5,000 at the Contract unit price, no adjustment in the Contract unit price will be made unless requested in writing by Contractor within 14 days from the date Contractor became aware, or should have reasonably become aware, of the increase in quantity.

2. **Decreases of More Than 25 Percent:** If the actual pay quantity of an item of Work is less than 75 percent of the approximate quantity, an adjustment in compensation will not be made unless Contractor makes a request in writing within 14 days from the date Contractor became aware, or should have reasonably become aware, of the decrease in quantity. If Contractor makes a request, the actual pay quantity of said item of Work performed will be paid for by adjusting the Contract unit price. Such adjustment of the Contract unit price will be the positive or negative difference between the Contract unit price and the actual unit cost of the total pay quantity of the item, including fixed costs. At the sole option of City, payment for the actual quantity of Work will be made by mutual acceptance of a lump sum amount or cost of Work based on time and materials in accordance with Section 3.4.
3. Payment for the actual pay quantity of such item of Work will in no case exceed the payment which would have been made for the performance of 75 percent of the approximate quantity of such item at the Contract unit price.

**B. Eliminated Items:**

If any Contract item of the Work is eliminated in its entirety, payment will be made to Contractor for the actual cost incurred in connection with the eliminated Contract item if incurred prior to the date of notification in writing by City of such elimination.

If acceptable material is ordered by Contractor for an eliminated Contract item prior to the date of notification of such elimination by City, and if orders for such material cannot be canceled, payment for such material will be made at the actual cost to Contractor. In such case, the material shall become the property of City. If the materials can be returned to the vendor and if City so directs, the material shall be returned and Contractor will be paid for the actual cost for returning the material.

The actual costs to be paid by City to Contractor in accordance with this Section will be computed based on Time and Materials in accordance with Section 3.4.

**C. Alternative Contract Items**

Items identified as Alternative in the Bid may be deleted entirely or in part at the sole discretion of City. The unit price of an Alternative contract item shall not be subject to adjustment due to any increase or decrease in actual quantity.

See Document 00800 for more detail.

**D. Change in Character of Work**

If an ordered change in the plans or specifications materially changes the character of the work of a contract item from that on which the Contractor based the bid price, and if the change increases or decreases the actual unit cost of the changed item as compared to the actual or estimated actual unit cost of performing the work of that item in accordance with the plans and specifications originally applicable thereto, in the absence of an executed contract change order specifying the compensation payable, an adjustment in compensation therefore will be made in accordance with the following.

The basis of the adjustment in compensation will be the difference between the actual unit cost to perform the work of that item or portion thereof involved in the change as originally planned and the actual unit cost of performing the work of the item or portion thereof involved in the change, as changed. Actual unit costs will be determined by the Engineer in the same manner as if the work were to be paid for on a force account basis as provided in Section 3.4; or the adjustment will be as agreed to by the Contractor and the Engineer. The adjustment will apply only to the portion of the work of the item actually changed in character. At the option of the Engineer, the work of the item or portion of item which is changed in character will be paid for by force account as provided in Section 3.4.

If the compensation for an item of work is adjusted under this Section, the costs recognized in determining that adjustment shall be excluded from consideration in making an adjustment for that item of work under the provisions in Section 3.3.

Failure of the Engineer to recognize a change in character of the work at the time the approved contract change order is issued shall in nowise be construed as relieving the Contractor of the duty and responsibility of filing a written protest within the limit as provided in Doc. 00700.

**3.4 Change in Contract Price – Not Applicable**

**A General**

The Contract Price constitutes the total compensation payable to Contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by Contractor to perform the Work shall be at Contractor's expense without change in the Contract Price.

The Contract Price may only be changed by a change order. Any request for an increase in the Contract Price shall be based on written notice delivered by Contractor to City promptly, but in no event later than 10 days after the date of the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the amount of the request with supporting data shall be delivered within 45 days after the date of the occurrence, unless City allows an additional period of time to ascertain more accurate data in support of the request, and shall be accompanied by Contractor's written statement that the amount requested covers all amounts (direct, indirect, and consequential) to which Contractor is entitled as a result of the occurrence of the event. No request for an adjustment in the Contract Price will be valid if not submitted in accordance with this Section.

The value of any Work covered by a change order or of any request for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- Where the Work involved is covered by unit prices contained in the Contract documents, by application of unit prices to the quantities of the items involved; or
- By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Section 3.4, provided Contractor submits documentation supporting the direct, indirect, overhead and profit components that compromise the lump sum amounts.

- On the basis of the cost of Work based on Time and Materials plus a Contractor's fee for overhead and profit, in accordance with this Section.

## **B Cost of Work (Based on Time and Materials)**

The term "cost of Work" means the sum of all costs necessarily incurred and paid by Contractor for labor, materials, and equipment in the proper performance of Work. Except as otherwise may be agreed to in writing by City, such costs shall be in amounts no higher than those prevailing in the locality of the project.

### **1 Labor:**

The cost of labor used in performing Work by Contractor, a Subcontractor, or other forces, will be the sum of the following:

The actual wages paid plus any employer payments to or on behalf of workers for fringe benefits, including health and welfare, pension, vacation, and similar purposes, not overlapping with the labor surcharge described below. The cost of labor may include the wages paid to foremen when it is determined by City that the services of foremen do not constitute a part of the overhead allowance.

There will be added to the actual wages as defined above, a percentage set forth in the latest "Labor Surcharge and Equipment Rental Rates" in use by the California State Department of Transportation which is in effect on the date upon which the work is accomplished. This percentage shall constitute full compensation for all payments imposed by State and Federal laws including, but not limited to, workers' compensation insurance and Social Security payments.

The amount paid for subsistence and travel required by collective bargaining agreements.

For equipment operators, payment for the actual cost of labor and subsistence or travel allowance will be made at the rates paid by Contractor to other workers operating similar equipment already on the work, or in the absence of such labor, established by collective bargaining agreements for the type of workers and location of the extra work, whether or not the operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with the provisions of this Section, which surcharge shall constitute full compensation for payments imposed by State and Federal laws, and all other payments made to on behalf of workers other than actual wages.

### **2 Materials:**

The cost of materials used in performing Work will be the cost to the purchaser, whether Contractor or subcontractor, from the supplier thereof, except as the following are applicable:

Trade discounts available to the purchaser shall be credited to City notwithstanding the fact that such discounts may not have been taken by Contractor.

For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by City. Markup, except for actual costs incurred in the handling of such materials, will not be allowed.

Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on extra work items or the current wholesale price for such materials delivered to the Work Site, whichever price is lower.

If, in the opinion of City, the cost of material is excessive, or Contractor does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the work Site, less trade discount. City reserves the right to furnish materials for the extra work and no claim shall be made by Contractor for costs and profit on such materials.

**3 Equipment:**

Contractor will be paid for the use of equipment at the rental rate listed for such equipment specified in the current edition of the Department of Transportation publication entitled, "Labor Surcharge and Equipment Rental Rates," which is in effect on the date upon which the work is accomplished. Such rental rates will be used to compute payments for equipment whether the equipment is under Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to City for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the foregoing publication, an equitable rental rate for the equipment will be established by City. Contractor may furnish cost data which might assist City in the establishment of the rental rate.

The rental rates paid, as above provided, shall include the cost of fuel, oil, lubrication supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals. Operators of equipment will be separately paid for as provided in this Section 3.4, "Labor".

All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

Before construction equipment is used on the extra work, Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to City, in duplicate, a description of the equipment and its identifying number.

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore.

**4 Owner-Operated Equipment:**

When owner-operated equipment is used to perform Work and is to be paid for as extra work, Contractor will be paid for the equipment and operator as follows:

Payment for the equipment will be made in accordance with the provisions of Section 3.4, "Equipment."

Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by Contractor to other workers operating similar equipment already on the project, or, in the absence of such other workers, at the rates for such labor established by collective bargaining agreement for type of worker and location of the work, whether or not the owner-operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with the provisions in Section 3.4, "Labor."

To the direct cost of equipment rental and labor, computed as provided herein, will be added the markup for equipment rental and labor as provided in Section 3.4, "Contractor's Fee."

**5 Equipment Time:**

The rental time to be paid for equipment on the Work shall be the time the equipment is in productive operation on the Work being performed and shall include the time required to move the equipment to the new location and return it to the original location or to another location requiring no more time than that required to return it to its original location; except that moving time will not be paid if the equipment is used on other than the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment will be made for loading and transporting costs when the equipment is used at the Site of the extra work on other than the extra work. The following shall be used in computing the rental time of equipment on the work:

- A. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be ½ -hour of operation, and any part of an hour in excess of 30 minutes will be considered 1-hour of operation.
- B. When daily rates are listed, operation for any part of a day less than 4 hours shall be considered to be half-day of operation.
- C. Rental time will not be allowed while equipment is inoperative due to breakdowns or Contractor caused delays.

**6 Cost of Work Documentation:**

Contractor shall furnish City Daily Extra Work Reports on a daily basis covering the direct costs of labor and materials and charges for equipment whether furnished by Contractor, subcontractor, or other forces. City will provide the Daily Extra Work Report forms to Contractor. Contractor or an authorized agent shall sign each Daily Extra Work Report. The Daily Extra Work Report shall provide names and classifications of workers and hours worked; size, type, and identification number of equipment; and the hours operated. Copies of certified payrolls and statement of fringe benefit shall substantiate labor charges. Valid copies of vendor's invoices shall substantiate material charges.

City will make any necessary adjustments. When these reports are agreed upon and signed by both parties, they shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit.

Contractor shall inform City when extra work will begin so that City inspector can concur with the Daily Extra Work Reports. Failure to conform to these requirements may impact Contractor's ability to receive proper compensation.

**7 Detours:**

Contractor shall construct and remove detours and detour bridges for the use of public traffic as provided in the Special Provisions, or as shown on the plans, or as directed by City. Payment for this work will be made as set forth in the Special Provisions or at the Contract Prices for the items of work involved if the work being performed is covered by contract items of work and no other method of payment therefore is provided in the Special Provisions, otherwise the work will be paid for as extra work as provided herein. The costs of repairing damaged detours caused by public traffic will be paid for as extra work as provided herein. When public traffic is routed through the work, provision for a passageway through construction operations will not be considered as detour construction or detour maintenance and this work shall conform to and be paid as basic scope of work, unless otherwise specified in the Special Provisions. Detours used exclusively by Contractor for hauling materials and equipment shall be constructed and maintained by Contractor at Contractor's expense. The failure or refusal of Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until the detours are in satisfactory condition for use by public traffic. Where Contractor is hauling is causing such damage to the detour that its maintenance in a condition satisfactory for public traffic is made difficult and unusually expensive, City shall have authority to regulate Contractor's hauling over the detour.

**8 Special Services**

Special services are defined as that work characterized by extraordinary complexity, sophistication, or innovations, or a combination of the foregoing attributes which are unique to the construction industry. The following may be considered by City in making estimates for payment for special services:

- A. When City and Contractor, by agreement, determine that a special service is required which cannot be performed by the forces of Contractor or those of any of its subcontractors, the special service may be performed by an entity especially skilled in the work to be performed. After validation of invoices and determination of market values by City, invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs.
- B. When Contractor is required to perform work necessitating special fabrication or machining process in a fabrication or a machine shop facility away from the job-Site, the charges for that

portion of the work performed at the off Site facility may, by agreement, be accepted as a special service and accordingly, the invoices for the work may be accepted without detailed itemization.

- C. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of the allowances for overhead and profit on labor, materials, and equipment specified in Section 3.4 “Contractor’s Fee”, herein, a single allowance of ten (10) percent will be added to invoices for special services.

**9 Contractor’s Fee**

- A. Work ordered on the basis of time and materials will be paid for at the actual and necessary cost as determined by City, plus allowances for overhead and profit which allowances shall constitute the “Contractor’s Fee”. For extra work involving a combination of increases and decreases in the work, the actual necessary cost will be the arithmetic sum of the additive and deductive costs. The allowance for overhead and profit shall include compensation for superintendence, bond and insurance premiums, taxes, all field and home office expenses, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for under Sections 3.4, “Cost of Work”, herein. The allowance for overhead and profit will be made in accordance with the following schedule:

| <b>Actual and Necessary Cost</b> | <b>Overhead and Profit Allowance</b> |
|----------------------------------|--------------------------------------|
| Labor .....                      | 33 percent                           |
| Materials .....                  | 15 percent                           |
| Equipment .....                  | 15 percent                           |

- B. Labor, materials, and equipment may be furnished by Contractor or by the subcontractor on behalf of Contractor: When all or any part of the extra work is performed by a subcontractor, the allowance specified in “Contractor’s Fee” shall only be applied to the labor, materials, and equipment costs of the subcontractors to which Contractor may add 5 percent of the subcontractor’s total cost for the extra work. Regardless of the number of hierarchical tiers of subcontractors, the 5 percent increase above the subcontractor’s total cost, which includes the allowances for overhead and profit specified herein, may be applied one time only for each separate work transaction.

**10 Compensation for Time Extensions**

Adjustments in compensation for time extension will be allowed only for causes identified in Section 3.5, Changes in Contract Time. No adjustments in compensation will be allowed when City-caused delays to a controlling item of work and Contractor-caused delays to a controlling item of work occur concurrently, or for causes identified in Section 3.5 Changes in Contract Time.

Compensation for idle time of equipment will be determined in accordance with the provisions in Section 3.4, Owner –Operated Equipment.

**11 Force-Account Work**

If it is impracticable because of nature of Work, or for any other reason, to fix an increase or decrease in price definitely in advance, the Contractor may be directed to proceed at a not-to-exceed (NTE) maximum price which shall not under any circumstances be exceeded. Subject to such limitation, such extra Work shall be paid for at actual necessary cost for Force-Account Work or at the negotiated cost, as determined by City. The cost for Force-Account Work shall be determined pursuant this Section.

Force-Account Work shall be used when it is not possible or practical to price out the changed Work prior to the start of that Work. In these cases, Force-Account Work will be utilized during the pricing and negotiation phase of the change. Once negotiations have been concluded and a bilateral agreement has been reached, the tracking of the Work under Force-Account is no longer necessary. Force-Account Work shall also be used when negotiations between City and Contractor have broken apart and a bilateral agreement on the value of the changed Work cannot be reached. City may approve other uses of Force-Account Work.

Whenever any Force-Account Work is in progress, definite price for which has not been agreed on in advance, Contractor shall report to City each Business Day in writing in detail amount and cost of labor and material used, and any other expense incurred in Force-Account Work on preceding Day, by using the Cost Proposal form attached hereto. No claim for compensation for Force-Account Work will be allowed unless report shall have been made.

Whenever Force-Account Work is in progress, definite price for which has not been agreed on in advance, Contractor shall report to City when 75 percent of the NTE amount has been expended.

Force-Account Work shall be paid as extra Work under this Section. Methods of determining payment for Work and materials provided in this Section shall not apply to performance of Work or furnishings of material that, in judgment of City, may properly be classified under items for which prices are otherwise established in Contract Documents.

## **12 Overhead Defined**

The following constitutes charges that are deemed included in overhead for all Contract Modifications, including Force-Account Work or CCD Work, whether incurred by Contractor, Subcontractors, or suppliers, and Contractor shall not invoice or receive payment for these costs separately:

- A.** Drawings: field drawings, Shop Drawings, etc., including submissions of drawings
- B.** Routine field inspection of Work proposed
- C.** General Superintendence
- D.** General administration and preparation of cost proposals, schedule analysis, change orders and other supporting documentation as necessary
- E.** Computer services
- F.** Reproduction services
- G.** Salaries of project engineer, superintendent, timekeeper, storekeeper and secretaries
- H.** Janitorial services
- I.** Temporary on-Site facilities:
  - Offices
  - Telephones
  - Plumbing
  - Electrical: Power, lighting
  - Platforms
  - Fencing, etc.
  - water
- J.** Home office expenses
- K.** Insurance and Bond premiums
- L.** Procurement and use of vehicles and fuel used coincidentally in Work otherwise included in the Contract Documents
- M.** Surveying
- N.** Estimating
- O.** Protection of Work
- P.** Handling and disposal fees
- Q.** Final cleanup
- R.** Other incidental Work

## **13 Records and Certifications**

Force-Account (cost reimbursement) charges shall be recorded daily and summarized in Cost Proposal form attached hereto. Contractor or authorized representative shall complete and sign form each day. Contractor shall also provide with the form: the names and classifications of workers and hours worked by each; an itemization of all materials used; a list by size type and identification number of equipment and hours operated; and an indication of all Work performed by specialists.



No payment for Force-Account Work shall be made until Contractor submits original invoices substantiating materials and specialists charges.

City shall have the right to audit all records in possession of Contractor relating to activities covered by Contractor's claims for modification of Contract, including Force-Account Work and CCD Work.

Further, City will have right to audit, inspect, or copy all records maintained in connection with this Contract, including financial records, in possession of Contractor relating to any transaction or activity occurring or arising out of, or by virtue of, the Contract. If Contractor is a joint venture, right of City shall apply collaterally to same extent to records of joint venture sponsor, and of each individual joint venture member. This right shall be specifically enforceable, and any failure of Contractor to voluntarily comply shall be deemed an irrevocable waiver and release of all claims then pending that were or could have been subject to this Document.

### **3.5 Change of Contract Time – Not Applicable**

#### **A General**

The Contract time may only be changed by a change order. Any request for an extension of the Contract time shall be based on written notice delivered by Contractor to City promptly, but in no event later than 10 days after the date of the occurrence of the event giving rise to the request. Such written notice shall identify the controlling item of work that justifies the time extension, and shall state in reasonable detail the general nature of the request. Notice of the full extent of the request with a supporting time impact evaluation shall be delivered within 25 days after the date of such occurrence, unless City allows an additional period of time to ascertain more accurate data in support of the request, and shall be accompanied by Contractor's written statement that the adjustment requested is the entire adjustment to which Contractor has reason to believe it is entitled as a result of the occurrence of said event. No request for an adjustment in the Contract time will be valid if not submitted in accordance with the requirements of this Section, and Contractor waives any rights not pursued under this Section.

The Contract time will only be extended when a delay occurs which impacts a controlling item of work as shown on the progress schedule required herein. Time extensions will be allowed only if the cause is beyond the control and without the fault or negligence of Contractor. Time extensions (without compensation of any sort) will also be allowed when City-caused delays to a controlling item of work and Contractor-caused delays to a controlling item of work occur concurrently or for adverse weather caused delays discussed below. Contractor will be notified if City determines that a time extension is not justified.

The Contract time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if a request is made therefore as provided in this Section. An extension of Contract time will only be granted for days on which (i) Contractor is prevented from proceeding with at least 75 percent of the normal labor and equipment force actually engaged on the said work, and (ii) by excusable occurrences or conditions resulting immediately therefrom which impact a controlling item of work as determined by City. Excusable delays shall include:

- Changes.
- Failure of City to furnish access, right of way, completed facilities of related projects, Drawings, materials, equipment, or services for which City is responsible.
- Survey error by City.
- Suspension of work pursuant to Section 7, Prosecution and Progress of Work.
- Occurrences of a severe and unusual nature, including, acts of God, fires, and excusable inclement weather. An "act of God" means an earthquake, flood, cloudburst, cyclone or other cataclysmic phenomena of nature beyond the power of Contractor to foresee or to make preparation in defense against, but does not include ordinary inclement weather. Excusable inclement weather is any weather condition, the duration of which varies in excess of the average conditions expected, which is unusual for the particular time and place where the

work is to be performed, or which could not have been reasonably anticipated by Contractor, as determined from National Oceanic and Atmospheric Administration ("NOAA") records for the proceeding 3-year period.

- Act of the public enemy, act of another governmental entity, public utility, epidemic, quarantine restriction, freight embargo, strike, or labor dispute. A delay to a subcontractor or supplier due to the above circumstances will be taken into consideration for extensions to the time of completion.

**B Extensions of Time for Delay Due to Excusable Inclement Weather**

The Contractor shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions which are normal for the locality of the site. The time period for the contract has been calculated with the consideration given to the average climate range and usual industrial conditions prevailing in the locality of the site.

Time extensions due to inclement weather will be allowed only for weather conditions that affect the progress of activities that are on the critical path. The Contractor shall exercise due diligence in protecting the work area from weather as well as take corrective action after the weather has passed. Time extensions will not be allowed until the average number of days for which precipitation exceeds 0.10 inch and the corresponding average precipitation in a given month or months has been exceeded. Delay due to inclement weather are not compensable.

Contractor shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring.

Abnormal weather conditions are those that exceed the averages indicated in the following table:

| <u>Month</u>    | <u>Days (1)</u> | <u>and</u> | <u>Precipitation (2)</u> |
|-----------------|-----------------|------------|--------------------------|
| January         | 6               |            | 3.06                     |
| February        | 6               |            | 2.49                     |
| March           | 6               |            | 2.31                     |
| April           | 3               |            | 1.06                     |
| May             | 1               |            | 0.40                     |
| June            | 0               |            | 0.09                     |
| July            | 0               |            | 0.04                     |
| August          | 0               |            | 0.09                     |
| September       | 1               |            | 0.21                     |
| October         | 2               |            | 0.73                     |
| November        | 4               |            | 1.73                     |
| <u>December</u> | <u>5</u>        |            | <u>2.28</u>              |
| Total           | 33              |            | 14.49                    |

- (1) The average number of days in which the precipitation exceeds 0.10 inches in the 24 hour period between midnight of one day and midnight of the next day.
- (2) The mean precipitation, in inches, for the month indicated, recorded at San Jose station #047821 of the period from 1948 to 2000.

The Contract time will be extended for as many days in excess of the average number of days of excusable inclement weather, as defined above, as Contractor is specifically required under the Special Provisions to suspend construction operations, provided that on such days Contractor is prevented by such excusable inclement weather, or conditions resulting immediately therefrom, from proceeding with at least 75 percent of the normal labor and equipment force engaged on critical items of work as shown on the schedule.

Should Contractor prepare to begin work at the regular starting time at the beginning of any regular work shift on any day on which excusable inclement weather, or the conditions resulting from the weather prevents work from beginning at the usual starting time and the crew is dismissed as a result thereof, Contractor will be entitled to a 1-day credit for advance weather whether or not conditions change thereafter during said day and the major portion of the day could be considered to be suitable

for such construction operations. If Contractor starts work and then suspends work due to excusable inclement weather, then Contractor shall be entitled to a prorate credit based upon the number of work hours lost.

Contractor shall base the construction schedule upon the inclusion of the number of days of excusable inclement weather (for rain, in excess of 0.1 inch) specified by NOAA for the locality of the Project. Notwithstanding the foregoing, extension of the Contract time due to excusable inclement weather will be granted until after the said aggregate total number of days of excusable inclement weather has been reached; however, no reduction in Contract time will be made if said number of days of excusable inclement weather is not reached.

### **3.6 Changed Site Conditions**

If any work involves digging trenches or other excavations below the surface, Contractor shall promptly and before the following conditions are disturbed, notify City in writing of any:

- A. Material that Contractor believes may be a regulated material that is required to be removed to a Class I, Class II, or Class III disposal Site in accordance with provisions of existing law.
- B. Subsurface or latent physical conditions at the Site differing from those indicated in this Contract.
- 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 for in the Contract.

City will promptly investigate the condition and if it finds that the conditions do materially so differ, or do involve regulated material, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, City will issue a change order under the procedures described in this Contract. For regulated materials, City reserves the right to use other forces for exploratory work to identify and determine the extent of such material and for removing regulated material from such areas.

In the event that a dispute arises between City and Contractor on whether the conditions materially differ or on Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Contract but shall proceed with all work to be performed under the Contract. Contractor shall retain any and all rights provided either by this Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

### **3.7 Cost Reduction Incentive**

The Contractor may submit to the Engineer, in writing, proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

Cost reduction proposals shall contain the following information:

- A. A description of both the existing contract requirements for performing the work and the proposed changes.
- B. An itemization of the contract requirements that must be changed if the proposal is adopted.
- C. A detailed estimate of the cost of performing the work under the existing contract and under the proposed change. The estimates of cost shall be determined in the same manner as if the work were to be paid for on a force account basis as provided in Section 3.4, "Cost of Work."
- D. A statement of the time within which the Engineer must make a decision thereon.
- E. The contract items of work affected by the proposed changes, including any quantity variation attributable thereto.

The provisions of this Section 3.7 shall not be construed to require the Engineer to consider any cost reduction proposal which may be submitted hereunder; proposed changes in basic design of a bridge or of a pavement type will not be considered as an acceptable cost reduction proposal; and the City will not be liable to the

Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this section nor for any delays to the work attributable to any cost reduction proposal. If a cost reduction proposal is similar to a change in the plans or specifications, under consideration by the City for the project, at the time the proposal is submitted or if the proposal is based upon or similar to Standard Specifications, standard special provisions or Standard Plans adopted by the City after the advertisement for the contract, the Engineer will not accept the proposal, and the City reserves the right to make the changes without compensation to the Contractor under the provisions of this section

The Contractor shall continue to perform the work in accordance with the requirements of the contract until an executed change order, incorporating the cost reduction proposal has been issued. If an executed change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, the cost reduction proposal shall be deemed rejected.

The Engineer shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of the proposal. In determining the estimated net savings, the right is reserved to disregard the contract bid prices if in the judgment of the Engineer, those prices do not represent a fair measure of the value of work to be performed or to be deleted.

The City reserves the right where it deems such action appropriate, to require the Contractor to share in the City's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering the proposal. Where this condition is imposed, the Contractor shall indicate acceptance thereof in writing, and that acceptance shall constitute full authority for the City to deduct amounts payable to the City from any moneys due or that may become due to the Contractor under the contract.

If the Contractor's cost reduction proposal is accepted in whole or in part the acceptance will be by a contract change order. The change order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or that part of it as has been accepted to be put into effect, and shall include any conditions upon which the City's approval thereof is based if the approval of the City is conditional. The change order shall also set forth the estimated net savings in construction costs attributable to the cost reduction proposal effectuated by the change order, and shall further provide that the Contractor be paid 50 percent of that estimated net savings amount. The Contractor's cost of preparing the cost reduction incentive proposal and the City's costs of investigating a cost reduction incentive proposal, including any portion thereof paid by the Contractor, shall be excluded from consideration in determining the estimated net savings in construction costs.

Acceptance of the cost reduction proposal and performance of the work thereunder shall not extend the time of completion of the contract unless specifically provided for in the contract change order authorizing the use of the cost reduction proposal.

The amount specified to be paid to the Contractor in the change order which effectuates a cost reduction proposal shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work thereof pursuant to the change order.

The City expressly reserves the right to adopt a cost reduction proposal for general use on contracts administered by the City when it determines that the proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted that proposal will be eligible for compensation pursuant to this section, and in that case, only as to those contracts awarded to that Contractor prior to submission of the accepted cost reduction proposal and as to which the cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Section 3.7 if the identical or similar previously submitted proposals were not adopted for general application to other contracts administered by the City. Subject to the provisions contained herein, the City or any other public agency shall have the right to use all or any part of any submitted cost reduction proposal without obligation or compensation of any kind to the Contractor.

Contractor may submit to City, in writing, proposals for modifying the Drawings, Specifications, or other requirements of the Contract for the sole purpose of reducing the total cost of construction.

Prior to preparing a written cost reduction proposal, Contractor shall request a meeting with City to discuss the proposal in concept. Items of discussion will also include permit issues, impact on other projects, impact on the project schedule, peer reviews, overall merit of the proposal, and review times required by City and other agencies.

If a cost reduction proposal submitted by Contractor, and subsequently approved by City, provides for a reduction in contract time, 50 percent of that contract time reduction shall be credited to City by reducing the contract working days, not including plant establishment.

If a cost reduction proposal submitted by Contractor, and subsequently approved by City, provides for a reduction in traffic congestion or avoids traffic congestion during construction, 60 percent of the estimated net savings in construction costs attributable to the cost reduction proposal will be paid to Contractor. Contractor shall provide detailed comparisons of the traffic handling between the existing contract and the proposed change, and estimates of the traffic volumes and congestion.

### **3.8 Dust Control**

During the performance of all work under this Contract, Contractor shall assume all responsibility for dust control and shall furnish all labor, equipment, and means required to carry out proper and efficient measures wherever and whenever dust control is necessary to prevent operations from producing dust damage and nuisance to persons and property. Any claims resulting therefrom shall be borne solely by Contractor.

### **3.9 Excavation Safety Plans**

Attention is directed to Section 6705 of the Labor Code concerning trench excavation safety plans. Excavations five (5) feet or more in depth shall not begin until Contractor has submitted and City has returned indicating "In Receipt Of" Contractor's detailed plan for worker protection from the hazards of caving ground during such excavations. The plan may be reviewed by City for completeness in accordance with federal, state and local regulations. City will not be responsible for reviewing the accuracy of assumptions, data and information used, and procedures contained in the plan or the adequacy thereof. Such plans shall show the details of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. The plan shall not allow the use of shoring, sloping, or a protective system less effective than that required by the Construction Safety Orders; and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan (including calculations) shall be prepared, signed and stamped by an engineer registered as a Civil or Structural engineer and an engineer registered as a Geotechnical Engineer, in the State of California pursuant to Sections 6700 et seq. of the Business & Professions Code.

Such plans shall be accompanied by a copy of the Permit to Excavate that has been issued by the Division of Occupational Safety and Health as required by Labor Code Section 6500 and following.

To the extent applicable, the Construction Safety Orders of the Division of Occupational Safety and Health shall apply to all excavations.

This Section shall be applicable regardless of Contract Price.

### **3.10 Asbestos-Related Work**

Contractor's attention is directed to Section 7058.5 of the Business and Professions Code which states that from and after January 1, 1987, no Contractor shall engage in asbestos-related work, as defined, who is not certified by Contractor's State License Council to do so.

Contractor's attention is also directed to Section 6501.5, and following, of the Labor Code relative to asbestos-related work and to provisions of the General Industry Safety Orders of Title 8 of the Code of Regulations and to the BAAQMD's Rule.

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and Contractor encounters materials which Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, Contractor may continue work in unaffected areas reasonably believed to be safe. Contractor shall immediately cease work in the affected area and report the condition to City in writing.

In conformance with Section 25914.1 of the Health and Safety Code, removal of asbestos or hazardous substances including exploratory work to identify and determine the extent of the asbestos or hazardous substance will be performed by separate contract.

If delay of work in the area delays the current controlling operation, Contractor may be entitled to a time extension (without additional compensation) as provided in Section 3.5, Change in Contract Time.

### **3.11 Substitutions**

This paragraph describes procedures for selecting products and requesting substitutions of unlisted materials in lieu of materials named in the Specifications or approved for use in Addenda.

#### **Contractor's Options:**

For products specified only by reference standard Contractor may select any product meeting that standard.

For products specified by naming one or more products or manufacturers, Contractor may select products of any named manufacturer meeting the Specifications.

If product becomes unavailable due to no fault of Contractor, submit Request for Substitution (RFS), including all information contained in this Document and a fully executed Document 00660 (Request for Substitution) available from the City upon request, but using the term "Contractor" each place the term "Bidder" appears in that form.

#### **Substitutions:**

Except as provided in Document 00200 (Instructions to Bidders) with respect to "or equal" items, City will consider Contractor's substitution requests only when product becomes unavailable due to no fault of Contractor. Requests for review of proposed substitute items will not be accepted from anyone other than Contractor. The RFS shall state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice Contractor's achievement of Substantial Completion on time, and whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for work on the Project).

Submit separate RFS (and FOUR copies) for each product and support each request with:

- A. Product identification.
- B. Manufacturer's literature.
- C. Samples, as applicable.
- D. Name and address of similar projects on which product has been used, and dates of installation.
- E. Name, address, and telephone number of manufacturer's representative or sales engineer.
- F. For construction methods: Detailed description of proposed method; drawings illustrating methods.

Where required, itemize a comparison of the proposed substitution with product specified and list significant variations including, but not limited to dimensions, weights, service requirements, and functional differences. If variation from product specified is not pointed out in submittal, variation will be rejected even though submittal was favorably reviewed. Identify all variations of the proposed substitute from that specified in the RFS and indicate available maintenance, repair, and replacement service.

State whether the substitute will require a change in any of the Contract Documents (or provisions of any other direct contract with City for work on the Project) to adapt the design of the proposed substitute, and whether or not incorporation or use of the substitute in connection with Work is subject to payment of any license fee or royalty. Submit data relating to changes in construction schedule.

Include accurate cost data comparing proposed substitution with product and amount of net change in Contract Sum including, but not limited to, an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by City in evaluating the proposed substitute. City may require Contractor to furnish additional data about the proposed substitute.

City will not consider substitutions for acceptance (or, in City's sole discretion, City may make Contractor solely responsible for all resulting costs, expenses and other consequences) when a substitution:

- A. Results in delay meeting construction Milestones or completion dates.
- B. Is indicated or implied on submittals without formal request from Contractor.
- C. Is requested directly by Subcontractor or supplier.
- D. Acceptance will require substantial revision of Contract Documents.
- E. Disrupts Contractor's job rhythm or ability to perform efficiently.

Substitute products shall not be ordered without written acceptance of City.

City will determine acceptability of proposed substitutions and reserve right to reject proposals due to insufficient information.

Accepted substitutions will be evidenced by a Change Order. All Contract Documents requirements apply to Work involving substitutions.

Contractor's RFS constitutes a representation and warranty that Contractor:

- A. Has investigated proposed product and determined that it meets or exceeds, in all respects, specified product.
- B. Will provide the same warranty for substitution as for specified product.
- C. Will coordinate installation and make other changes that may be required for Work to be complete in all respects.
- D. Waives claims for additional costs which may subsequently become apparent.
- E. Will compensate City for additional redesign costs associated with substitution.
- F. Will be responsible for Construction Schedule slippage due to substitution.
- G. Will be responsible for Construction Schedule delay due to late ordering of available specified products caused by requests for substitution that are subsequently rejected by City.
- H. Will compensate City for all costs; including extra costs of performing Work under Contract Documents, extra cost to other contractors, and any claims brought against City, caused by late requests for substitutions or late ordering of products.

City will review Contractor's RFS with reasonable promptness and notify Contractor in writing of decision to accept or reject requested substitution

Specified products, materials, or systems for Project may include engineering or on-file standards required by the regulatory agency. Contractor's substitution of products, materials or systems may require additional engineering, testing, reviews, approvals, assurances, or other information for compliance with regulatory agency requirements or both. Provide all agency approvals or other additional information required and pay additional costs for required City services made necessary by the substitution at no increase in Contract Sum or Contract Time, and as a part of substitution proposal

### **3.12 Hazardous Materials / Waste**

Comply with Sections 5163 through 5167 of the *General Industry Safety Orders (California Code of Regulations, Title 8)* to protect the Site from being contaminated by the accidental release of any hazardous materials and/or waste.

If Contractor encounters subsurface contamination, the following provisions and precautionary measures shall be implemented during construction:

Contractor's personnel shall be alert for and immediately report to City any detectable chemical odors, unusual debris, or discolored soil, in accordance with California Public Contract Code Section 7104.

Should the discovery of contaminants cause delay to Contractor's operations, extension of Contract Time will be granted by City in accordance with Document 00700 (General Conditions). Contractor will not be entitled to damages or additional payment due to such delay.

If hazardous materials are encountered, they shall be handled in accordance with applicable local, state, and federal regulations which may include: (1) CCR Title 8, Division 4, Chapter 4, Section 5192 (Hazardous Waste Operations and Emergency Response); (2) CCR, Title 22, Division 4.5, Chapters 10 through 13 and 18 (Environmental Health Standards for Management of Hazardous Waste); and (3) CCR Title 23, Division 3, Chapter 15 (Discharges of Waste to Land).

**Disposal requirements:** Soils containing hazardous materials shall be disposed by Contractor at permitted treatment, recycling, or disposal facilities in accordance with CCR Title 23, Division 3, Chapter 15 (Discharges of Waste to Land). Determine to which permitted treatment, recycling, or disposal facilities the soil will be delivered.

**Fees:** Pay for any fees associated with the treatment, recycling, or disposal of these soils. Any additional soil sampling and chemical analyses required for acceptance of the soil at facilities other than those described above shall be the responsibility of Contractor.

**Transport:** Transport the soils to the selected facilities under approved manifests and submit copies of these manifests and the facility weight tickets to City.

**Dewatering:** Construct, operate and maintain as required to complete the Work all necessary cofferdams, channels, pipes, flumes, drains, sumps, well points and protective works; and furnish, install, operate and maintain all necessary pumping and other equipment for dewatering the areas of Work suspected of containing hazardous materials; and control all surface flow and groundwater as may be encountered while performing the Work. Remove all water that may accumulate in the excavation while the Work progresses so that all Work can be performed in dry conditions. All contaminated water shall be removed from the excavation before it is backfilled. The excavation shall be kept free from water until backfilling has progressed to a height above the water source. **Storage tank:** Provide a minimum 2,500-gallon double-walled water storage tank on Site for the duration of the Work. If more storage capacity is needed, provide additional storage tanks on Site.

**Water sampling and chemical analysis:** Water samples shall be collected from the holding tanks and submitted to a State-Certified chemical analysis laboratory. Chemical analyses required for the samples shall at a minimum include: TPHg following EPA Test Methods 5030/8015 (modified); benzene, toluene, ethylbenzene, and total xylenes (BTEX) following EPA Test Method 8020; and chlorinated solvents following EPA Test Method 8010. Perform additional chemical analyses that may be required for disposal or recycling of the water. Laboratory chemical analysis reports associated with the water samples shall be provided to City.

**Removal of dewatering equipment:** After having served their purpose, all protective works, including the temporary water storage tank(s) and dewatering pumps, shall be decontaminated and removed from the Site. Contractor is responsible for permanent disposal of all equipment that cannot be decontaminated or recycled in accordance with all applicable laws and regulations.

### **3.13 Inert Solids and Plant Materials Recycling**

The Contractor shall have all asphalt concrete, Portland cement concrete, aggregate base material, inert solids and any plant material removed from the project site and deposited at a recognized acceptable recycling facility. Inert solids and plant materials shall not be disposed of at landfills.

It is the Contractor's responsibility to conform the above material to an acceptable size and composition in order to enable the acceptance of this material at a recognized inert solid or other acceptable recycling facility. All recycling facilities may be subject to the approval of the Engineer.

Recycling shall include the transportation and disposal of the material as specified in these specifications and as directed by the Engineer.

Documentation shall be submitted to the City Inspector for each load of inert solid and plant material removed from the project site on a daily basis. Failure to submit this documentation on a timely basis may delay progress payments. This documentation shall include the following:



- A. Project title
- B. Date and time
- C. Truck number
- D. Type of material
- E. Weight of material
- F. Name and address of recycling facility
- G. Certification by recycling facility

Also contractor must report the total amount in tons of material disposed of at a landfill. Provide information the following information: Project name, date and time, truck number, type of material, weight of material, name of landfill facility and address.

**Collection of Debris:**

Debris from a project in Cupertino can be collected and disposed of in either a:

- A. Los Altos Garbage Co. bin (call 725-4020 to order), OR
- B. bin owned by the project's general contractor or demolition contractor, and hauled by a vehicle owned and registered to that contractor; (contractor should be prepared to prove ownership) OR
- C. private truck with a bed, but no bin

The Los Altos Garbage Company is the only debris bin service provider franchised to do business in Cupertino. Bins from other leasing companies may not be used in Cupertino.

**Recyclable Materials**

Recyclable materials may be collected in private debris bins or containers leased from ANY company, as long as the materials are both:

- A. separated by type of material into separate containers, AND
- B. are not contaminated by garbage.

Separated recyclable materials are materials that are separated into individual containers, each containing just one type of recyclable material. Typical examples of recyclable materials include: metal, wood, concrete, steel-reinforced concrete, asphalt, tree trimmings, white goods, toilets, rocks and clean fill dirt. Separated recyclables must ultimately be recycled or otherwise reused, and not disposed of in a landfill.

Contractor should be prepared to provide the name and phone number of any recycling companies being used on the project. A list of some local recycling companies that can accept separated recyclable materials is available in the literature display rack in the downstairs Planning/Building Department lobby in City Hall.

**3.14 Storm Water Pollution Control**

In compliance with the State and Federal regulations regarding storm water management during construction, no waste materials or pollutants will be allowed to enter the storm drainage system. In addition to reducing downstream erosion and sedimentation, keeping pollutants and other debris out of storm drains reduces the direct discharge of materials and wastes to local creeks and San Francisco Bay.

The Contractor shall contain and remove any waste generated by the Contractor's construction operation using the appropriate Best Management Practices (BMPs) and shall properly dispose of the waste or pollutants off-site. If solid or liquid waste materials or pollutants originating from the Contractor's operation enter the storm drain system, the Contractor will be required to thoroughly clean up the affected catch basins, storm sewer and storm manholes to the satisfaction of the Engineer. If the Contractor fails to meet the requirements of this section, the City will issue a stop-work notice and take necessary action to require the Contractor to set up the preventive measures or clean up the storm drainage system as the case may be. All costs related to the stop-work action and corrective work shall be solely borne by the Contractor.

The following requirements shall be implemented to prevent the pollution of storm water runoff from construction projects.

#### **General Requirements**

Water pollution control work shall conform to the provisions in this Document, the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity No. CAS000002 (NPDES Construction General Permit) and these provisions. For additional information regarding the requirements of the NPDES Construction General Permit, refer to the State Water Resources Control Board web site at <http://www.swrcb.ca.gov/stormwtr/construction.html>.

The Contractor shall be responsible for the costs and liabilities imposed by law as a result of the Contractor's failure or negligence in complying with the provisions set forth in this section and in the technical specifications for this project. For the purposes of this section, costs and liabilities include, but are not limited to, fines, penalties and damages whether assessed against the City or the Contractor, including those levied under the Federal Clean Water Act and the State Porter Cologne Water Quality Act.

In addition to the remedies authorized by law, partial payments due the Contractor under the contract may be retained by the City until financial and legal disposition has been made of the costs and liabilities.

The retention of money due the Contractor shall be subject to the following:

- A. The Engineer will give the Contractor thirty (30) days notice of the City's intention to retain funds from partial payments that may become due to the Contractor prior to acceptance of the contract. Retention of funds from payments made after acceptance of the contract may be made without prior notice to the Contractor.
- B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments pursuant to Section 9-1.06, "Partial Payments," of the Standard Provisions.
- C. If the City has retained funds and it is subsequently determined that the City is not subject to the costs and liabilities in connection with the matter for which the retention was made, the City shall be liable for interest on the amount retained at the legal rate of interest for the period of the retention.

Conformance with the provisions of this section and the technical specifications for this project shall not relieve the Contractor from the Contractor's responsibilities, as provided in Section 7, "Legal Relations and Responsibilities," of the Standard Specifications.

#### **Storm Water Pollution Prevention Plan Preparation**

The Contractor shall incorporate the following Best Management Practices (BMPs), as applicable, into the site-specific Storm Water Pollution Prevention Plan (SWPPP) required for this project.

The following requirements shall be met on all projects within the City of Cupertino.

#### **Non Hazardous Material/Waste Management**

- A. CONTRACTOR shall propose designated areas of the project site, for approval by the CITY ENGINEER, suitable for material delivery, storage, and waste collection that, to the maximum extent practicable, are near construction entrances and away from catch basins, gutters, drainage courses, and creeks.
- B. CONTRACTOR shall store granular material at least ten feet away from catch basin and curb returns.
- C. CONTRACTOR shall not allow granular material to enter the storm drains or creeks.
- D. When rain is forecast within 24 hours or during wet weather, the CITY ENGINEER may require the CONTRACTOR to cover granular material with a tarpaulin and to surround the material with sand bags.

- E. CONTRACTOR shall use minimal amounts of water to control dust on a daily basis or as directed by the CITY ENGINEER.
- F. At the end of each working day or as directed by the CITY ENGINEER, the CONTRACTOR shall clean and sweep roadways and on-site paved areas of all materials attributed to or involved in the work.
- G. CONTRACTOR shall not use water to flush down streets in place of street sweeping.
- H. CONTRACTOR shall recycle aggregate base material, asphalt concrete, and Portland cement concrete as described in Section C, Special Provisions, section ***Inert Solids Recycling***, of these Specifications.
- I. In addition, to the maximum extent practicable, the CONTRACTOR shall reuse or recycle any useful construction materials generated during the project.
- J. At the end of each working day, the CONTRACTOR shall collect all scrap, debris, and waste material, and dispose of such materials properly.
- K. CONTRACTOR shall inspect dumpsters for leaks and contact trash hauling contractors to replace or repair dumpsters that leak.
- L. CONTRACTOR shall not discharge water on-site from cleaning dumpsters.
- M. CONTRACTOR shall arrange for regular waste collection before dumpsters overflow.

#### **Hazardous Material/Waste Management**

- A. The CONTRACTOR shall label and store all hazardous materials, such as pesticides, paints, thinners, solvents, and fuels; and all hazardous wastes, such as waste oil and antifreeze; in accordance with the City of Cupertino Hazardous Materials Storage Ordinance and all applicable State and Federal regulations.
- B. CONTRACTOR shall store all hazardous materials and all hazardous wastes in accordance with secondary containment regulations, and it is recommended that these materials and wastes be covered, as needed, to avoid potential management of collected rain water as a hazardous waste.
- C. CONTRACTOR shall keep an accurate, up-to-date inventory, including Materials Safety Data Sheets (MSDSs), of hazardous materials and hazardous wastes stored on-site, to assist emergency response personnel in the event of a hazardous materials incident.
- D. When rain is forecast within 24 hours or during wet weather, the CITY ENGINEER may prevent the CONTRACTOR from applying chemicals in outside areas.
- E. CONTRACTOR shall not over-apply pesticides or fertilizers and shall follow materials manufacturer's instructions regarding uses, protective equipment, ventilation, flammability, and mixing of chemicals. Over-application of a pesticide constitutes a "label violation" subject to an enforcement action by the Santa Clara County Agriculture Department.
- F. The CONTRACTOR shall arrange for regular hazardous waste collection to comply with time limits on storage of hazardous wastes.
- G. The CONTRACTOR shall dispose of hazardous waste only at authorized and permitted treatment, storage and disposal facilities, and use only licensed hazardous waste haulers to remove the waste off-site, unless quantities to be transported are below applicable threshold limits for transportation specified in State and Federal regulations.
- H. If the CONTRACTOR'S business office is located in Santa Clara County then the CONTRACTOR may dispose of this waste through the Countywide Household Hazardous Waste Program. Information on this program may be requested by calling (408) 299-7300.

#### **Spill Prevention and Control**

- A. The CONTRACTOR shall keep a stockpile of spill cleanup materials, such as rags or absorbents, readily accessible on-site.

- B. The CONTRACTOR shall immediately contain and prevent leaks and spills from entering storm drains, and properly clean up and dispose of the waste and cleanup materials. If the waste is hazardous, the CONTRACTOR shall handle the waste as described in section above.
- C. The CONTRACTOR shall not wash any spilled material into streets, gutters, storm drains, or creeks and shall not bury spilled hazardous materials.
- D. The CONTRACTOR shall report any hazardous materials spill by calling 911.

#### **Vehicle/Equipment Cleaning**

- A. The CONTRACTOR shall not perform vehicle or equipment cleaning on-site or in the street using soaps, solvents, degreasers, steam cleaning equipment, or equivalent methods.
- B. The CONTRACTOR shall perform vehicle or equipment cleaning, with water only, in a designated, bermed area that will not allow rinse water to run off-site or into streets, gutters, storm drains, or creeks.

#### **Vehicle/Equipment Maintenance and Fueling**

- A. CONTRACTOR shall perform maintenance and fueling of vehicles or equipment in a designated, bermed area or over a drip pan that will not allow run-on of storm water or runoff of spills.
- B. CONTRACTOR shall use secondary containment, such as a drip pan, to catch leaks or spills any time that vehicle or equipment fluids are dispensed, changed, or poured.
- C. CONTRACTOR shall keep a stockpile of spill cleanup materials, such as rags or absorbents, readily accessible on-site.
- D. CONTRACTOR shall clean up leaks and spills of vehicle or equipment fluids immediately and dispose of the waste and cleanup materials as hazardous waste, as described above.
- E. CONTRACTOR shall not wash any spilled material into streets, gutters, storm drains, or creeks and shall not bury spilled hazardous materials.
- F. CONTRACTOR shall report any hazardous materials spill by calling 911.
- G. CONTRACTOR shall inspect vehicles and equipment arriving on-site for leaking fluids and shall promptly repair leaking vehicles and equipment. Drip pans shall be used to catch leaks until repairs are made. Shut-off valves on equipment must be working properly.
- H. CONTRACTOR shall comply with Federal, State and City requirements for aboveground storage tanks.

#### **Contractor Training and Awareness**

- A. CONTRACTOR shall train all employees/subcontractors on the storm water pollution prevention requirements contained in these Specifications.
- B. CONTRACTOR shall inform subcontractors of the storm water pollution prevention contract requirements and include appropriate subcontract provisions to ensure that these requirements are met.
- C. CONTRACTOR shall post warning signs in areas treated with chemicals.
- D. CONTRACTOR shall paint new catch basins, constructed as part of the project, with the "No Dumping" stencil available from Cupertino Public Works Department at City Hall (408) 777-3354.

#### **Activity-Specific Requirements**

The following requirements shall be met on all projects within the City of Cupertino that include the listed activities.

#### **Dewatering Operations**

- A. CONTRACTOR shall route water through a control measure, such as a sediment trap, sediment basin, or Baker tank, to remove settleable solids prior to discharge to the storm drain system. Refer to *California Storm Water Management Practice Handbook* for these control measures.
- B. Approval of the control measure shall be obtained in advance from the CITY ENGINEER.
- C. Filtration of the water following the control measure may be required on a case-by-case basis.

- D. If the CITY ENGINEER determines that the dewatering operation would not generate an appreciable amount of settleable solids, the control measure requirement in 1) above may be waived.
- E. CONTRACTOR shall reuse water for other needs, such as dust control or irrigation, to the maximum extent practicable.

#### **Paving Operations**

- A. When rain is forecast within 24 hours or during wet weather, the CITY ENGINEER may prevent the CONTRACTOR from paving.
- B. The CITY ENGINEER may direct the CONTRACTOR to protect drainage courses by using control measures, such as earth dike, straw bale, and sand bag, to divert runoff or trap and filter sediment. Refer to *California Storm Water Best Management Practice Handbook* for these control measures.
- C. The CONTRACTOR shall place drip pans or absorbent material under paving equipment when not in use.
- D. The CONTRACTOR shall cover catch basins and manholes when paving or applying seal coat, tack coat, slurry seal, or fog seal.
- E. If the paving operation includes an on-site mixing plant, the CONTRACTOR shall comply with Santa Clara County General Industrial Activities Storm Water Permit requirements.
- F. The CONTRACTOR shall preheat, transfer or load hot bituminous material away from drainage systems or watercourses.
- G. The CONTRACTOR shall not sweep or wash down excess sand (placed as part of a sand seal or to absorb excess oil) into streets, gutters, storm drains, or creeks. Instead, the CONTRACTOR shall either collect the sand and return it to the stockpile, or dispose of it in a trash container. The CONTRACTOR shall not use water to wash down fresh asphalt concrete pavement.

#### **Saw Cutting**

- A. During saw cutting and grinding operations, use as little water as possible.
- B. During saw cutting, the CONTRACTOR shall cover or barricade catch basins using control measures, such as filter fabric, straw bales, sand bags, and fine gravel dams, to keep slurry out of the storm drain system. When protecting a catch basin, the CONTRACTOR shall ensure that the entire opening is covered. Refer to *California Storm Water Best Management Practice Handbook* for these control measures.
- C. The CONTRACTOR shall shovel, absorb or vacuum saw cut slurry and pick up the waste prior to moving to the next location or at the end of each working day, whichever is sooner.
- D. If saw cut slurry enters catch basins, the CONTRACTOR shall remove the slurry from the storm drain system immediately.

#### **Traffic Detector Loop Installation and Repair**

- A. Protect nearby storm drain inlets prior to cutting or flushing slot for traffic detector loops. Block or berm around nearby storm drain inlets using sand bags or an equivalent barrier or use absorbent materials such as pads, pillows and socks to contain slurry.
- B. Clean up residues by sweeping up as much material as possible and dispose of material properly.

#### **Concrete, Grout and Mortar Waste Management**

- A. The CONTRACTOR shall avoid mixing excess amounts of fresh concrete or cement mortar on-site.
- B. The CONTRACTOR shall store concrete, grout and mortar away from drainage areas and ensure that these materials do not enter the storm drain system.
- C. The CONTRACTOR shall not wash out concrete trucks or equipment into streets, gutters, storm drains, or creeks.
- D. The CONTRACTOR shall perform washout of concrete trucks or equipment off-site or in a designated area on-site where the water will flow onto dirt or into a temporary pit in a dirt area. The CONTRACTOR shall let the water percolate into the soil and dispose of the hardened concrete in a

trash container. If a suitable dirt area is not available, the CONTRACTOR shall collect the wash water and remove it off-site.

- E. The CONTRACTOR shall avoid creating runoff by draining water from washing of exposed aggregate concrete to a dirt area. If a suitable dirt area is not available, then the CONTRACTOR shall filter the wash water through straw bales or equivalent material before discharging to the storm drain.
- F. The CONTRACTOR shall collect and return sweepings from exposed aggregate concrete to a stockpile or dispose of the waste in a trash container.

#### **Painting**

- A. CONTRACTOR shall conduct cleaning of painting equipment and tools in a designated area that will not allow run-on of storm water or runoff of spills.
- B. CONTRACTOR shall not allow wash water from cleaning of painting equipment and tools into streets, gutters, storm drains or creeks.
- C. CONTRACTOR shall remove as much excess paint as possible from brushes, rollers and equipment before starting cleanup.
- D. To the maximum extent practicable, the CONTRACTOR shall dispose of wash water from aqueous cleaning of equipment and tools to the sanitary sewer.
- E. Otherwise, the CONTRACTOR shall direct wash water onto dirt area and spade in.
- F. CONTRACTOR shall remove as much excess paint as possible from brushes, rollers and equipment before starting cleanup.
- G. To the maximum extent practicable, the CONTRACTOR shall filter paint thinner and solvents for reuse.
- H. CONTRACTOR shall dispose of waste thinner and solvent and sludge from cleaning of equipment and tools as hazardous waste, as described above.
- I. CONTRACTOR shall store paint, solvents, chemicals, and waste materials in compliance with the City of Cupertino Hazardous Materials Storage Ordinance and all applicable State and Federal regulations. The CONTRACTOR shall store these materials in a designated area that will not allow run-on of storm water or runoff of spills.
- J. CONTRACTOR shall dispose of excess thinners, solvents, oil and water-based paint as hazardous waste.
- K. CONTRACTOR shall dispose of dry, empty paint cans/buckets, old brushes, rollers, rags, and drop cloths in the trash.

#### **Earthwork**

CONTRACTOR shall maximize the control of erosion and sediment by using the Best Management Practices for erosion and sedimentation in the *California Storm Water Best Management Practice Handbook - Construction Activity* or *ABAG Manual of Standards for Erosion and Sediment Control Measures*.

#### **Thermoplastic**

- A. The CONTRACTOR shall transfer and load hot thermoplastic away from drainage systems or watercourses.
- B. The CONTRACTOR shall sweep thermoplastic grindings into plastic bags. Yellow thermoplastic grindings may require special handling as they may contain paint.

#### **Pesticide Usage and Pest Management**

- A. Follow all federal, state, and local policies (including the City's Integrated Pest Management Policy), law and regulations governing the use, storage, and disposal of pesticides and training of pest control advisors and applicators.
- B. Consider employing integrated pest management methods, including:
  - 1. No controls;
  - 2. Physical and/ or mechanical methods;

3. Environmental controls (mulching, pest-resistant vegetation)
  4. Biological controls (predators, parasites, etc.);
  5. Less toxic controls (soaps and oils etc.) and;
  6. Hot water.
- C. Use the least toxic pesticides that will do the job, provided there is a choice. The agency will take into consideration the LD50, overall risk to the applicator, and impact to the environment.
  - D. Apply pesticides at the appropriate time to maximize their effectiveness and minimize the likelihood of discharging non-degraded pesticides in stormwater runoff. Avoid application of pesticides if rain is expected.
  - E. Mix and apply only as much material as is necessary for treatment. Calibrate application equipment prior to and during use to ensure desired application rate.
  - F. Do not mix or load pesticides in application equipment adjacent to a storm drain inlet culvert or watercourse.
  - G. Use of Clopyralid, Diazinon, Chlorpyrifos, Chloradane, DDT, Dieldrin or other organophosphates is prohibited.

Prior to application of any pesticides, Contractor must receive approval for application from the City's licensed pest control advisor, Diane Mahan (777-3343). Contractor must provide the pest control advisor with monthly summaries of pesticide use (City to provide forms for the summary).

### **SWPPP Implementation**

The Contractor shall be responsible throughout the duration of the project for installing, constructing, inspecting and maintaining the BMPs included in the SWPPP or an erosion control plan and any amendments thereto and for removing and disposing of temporary control measures. Unless otherwise directed by the Engineer or specified in these special provisions, the Contractor's responsibility for SWPPP or the erosion control plan implementation shall continue throughout any temporary suspension of work ordered in conformance with the provisions in Section 7 of this Document.

Throughout the rainy season, the Contractor shall demonstrate the ability and preparedness to fully deploy soil stabilization and sediment control BMPs to protect soil-disturbed areas on the project site before the onset of rain. A quantity of soil stabilization and sediment control materials shall be maintained on site equal to 125 percent of that sufficient to protect unprotected, soil-disturbed areas on the project site. A current inventory of control measure materials and a plan to use them shall be included in the SWPPP or on the erosion control plan.

Throughout the rainy season, active soil-disturbed areas of the site shall be fully protected at the end of each day with soil stabilization and sediment control BMPs unless fair weather is predicted the next day. The Contractor shall monitor the weather forecast on a daily basis. The National Weather Service forecast shall be used. If precipitation is predicted prior to the end of the following workday, construction scheduling shall be modified, as required, and functioning BMPs shall be deployed prior to the onset of rain.

### **BMP Maintenance**

To ensure proper implementation and function of BMPs, the Contractor shall regularly inspect and maintain the construction site for the BMPs included in the SWPPP or on an erosion control plan. The Contractor shall identify corrective actions and the time needed to address any deficient BMPs or reinitiate any BMPs that have been discontinued. The Contractor shall keep written records of all BMP inspections, maintenance activities and corrective actions.

The Contractor shall inspect the construction site as follows:

- A. Prior to a forecast storm;
- B. After any precipitation causes runoff;
- C. At 24-hour intervals during extended rain events; and
- D. Routinely, at a minimum of once every week

If the Contractor or the Engineer identifies a deficiency in the deployment or functioning of an identified BMP, the deficiency shall be corrected immediately. The deficiency may be corrected at a later date and time if

requested by the Contractor and approved by the Engineer in writing, but not later than the onset of the subsequent rain event. The correction of deficiencies shall be at no additional cost to the City.

## **SECTION 4. CONTROL OF WORK**

### **4.1 Authority of City**

City shall decide all questions which may arise as to the quality or acceptability of materials furnished and Work performed and rate of progress of the Work, all questions which may arise as to the interpretation of the Drawings and Specifications, and all questions as to the acceptable fulfillment of the Contract on the part of Contractor. City's decision shall be final. City shall have authority to enforce and make effective such decisions and orders which Contractor fails to carry out promptly.

### **4.2 Submittals – Not Applicable**

Submit, at Contractor's expense, in digital format, the following items ("Submittals") required by the Contract :

- A. Schedule of Shop Drawing and Sample Submittals
- B. Safety Plans
- C. Progress Schedules
- D. Product Data Shop Drawings
- E. Samples
- F. Coordination Drawings
- G. Quality Assurance Control Data
- H. Machine Inventory Sheets
- I. Installation, Operation, and Maintenance Manuals
- J. Computer Programs
- K. Project Record Documents
- L. Seismic Submittal Review Forms, where specified.

All submittals shall be digitally submitted unless prior exception is granted by the City.

Submit these Submittals to City for review and approval in accordance with accepted Schedule of Shop Drawings and Samples Submittals. If no such schedule is agreed upon, then all Shop Drawing, Samples, and product data Submittals shall be submitted within 21 Days after receipt of Notice of Award from City.

Transmit each item with a City approved Submittal transmittal form. Identify Project, Contractor, Subcontractor, major supplier, pertinent Drawing sheet and detail number, and Specification Section number as appropriate. Where manufacturer's standard drawings or data sheets are used, they shall be marked clearly to show those portions of the data that are applicable to this Project. Inapplicable portions shall be marked out. Submittals shall be submitted based on each Specification Section. Submittals containing information about more than one Specification Document will be returned for resubmittal. Submittals shall include all information requested by each Specification Section. (No partial Submittals.) Incomplete Submittals will be returned not reviewed by City.

The data shown on the Submittals shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show City the materials and equipment Contractor proposes to provide and to enable City to review the information for the limited purposes specified in this Document. Submittals shall be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which it is intended and otherwise as City may require to enable City to review the Submittal. The quantity of each Submittal to be submitted will be as required by individual Specification Documents or this Document.

At the time of each submission, give City specific notice of all variations, if any, that the submitted Submittal may have from the requirements of the Contract Documents, and the reasons therefore. This notice shall be in a communication attached to the Submittal transmittal form. In addition, cause a specific notation to be made on each Submittal submitted to City, for review and approval of each such variation. If City accepts deviation, City will note its acceptance on the returned Submittal transmittal form and, if necessary, issue appropriate Contract Modification.



Submittal coordination and verification is responsibility of Contractor; this responsibility shall not be delegated in whole or in part to Subcontractors or suppliers. Before submitting each Submittal, review and coordinate each Submittal with other Submittals and with the requirements of the Work and the Contract Documents, and determine and verify:

- A. All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto;
- B. All materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work; and
- C. All information relative to Contractor's sole responsibilities and of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

Contractor's submission to City of a Submittal shall constitute Contractor's representation that it has satisfied its obligations under the Contract Documents, and as set forth immediately above in this paragraph, with respect to Contractor's review and approval of that Submittal.

Designation of work "by others," if shown in Submittals, shall mean that work will be responsibility of Contractor rather than Subcontractor or supplier who has prepared Submittals.

After review by City of each of Contractor's Submittals, the City will be returned to Contractor with actions defined as follows:

- A. **NO EXCEPTIONS TAKEN** - Accepted subject to its compatibility with future Submittals and additional partial Submittals for portions of the Work not covered in this Submittal. Does not constitute approval or deletion of specified or required items not shown on the Submittal.
- B. **MAKE CORRECTIONS NOTED (NO RESUBMISSIONS REQUIRED)** - Same as item 1 above, except that minor corrections as noted shall be made by Contractor.
- C. **REVISE AS NOTED AND RESUBMIT** - Rejected because of major inconsistencies or errors that shall be resolved or corrected by Contractor prior to subsequent review by City.
- D. **REJECTED - RESUBMIT** - Submitted material does not conform to Drawings and/or Specifications in major respect, i.e.: wrong size, model, capacity, or material.

Make a complete and acceptable Submittal at least by second submission. City reserves the right to deduct monies from payments due Contractor to cover additional costs of review beyond the second submission. Illegible Submittals will be rejected and returned to Contractor for resubmission. Contractor shall be in breach of the Contract if Contractor's first resubmittal, following a Submittal which City determines falls within categories C or D above, does not fall within categories A or B above.

Favorable review will not constitute acceptance by City of any responsibility for the accuracy, coordination and completeness of the Submittals. Accuracy, coordination, and completeness of Submittals shall be sole responsibility of Contractor, including responsibility to back-check comments, corrections, and modifications from City's review before fabrication. Contractor, Subcontractors, or suppliers may prepare Submittals, but Contractor shall ascertain that Submittals meet requirements of Contract Documents, while conforming to structural space and access conditions at point of installation. City's review will be only to assess if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as indicated by the Contract Documents. Favorable review of Submittal, method of work, or information regarding materials and equipment Contractor proposes to furnish shall not relieve Contractor of responsibility for errors therein and shall not be regarded as assumption of risks or liability by City, or any officer or employee thereof, and Contractor shall have no claim under Contract Documents on account of failure or partial failure or inefficiency or insufficiency of any plan or method of work or material and equipment so accepted. Favorable review shall be considered to mean merely that City has no objection to Contractor using, upon Contractor's own full responsibility, plan or method of work proposed, or furnishing materials and equipment proposed.

City's review will not extend the means, methods, techniques, sequences or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

Submit complete initial Submittal for those items where required by individual Specification Sections. Complete Submittal shall contain sufficient data to demonstrate that items comply with Specifications, shall meet minimum requirements for submissions cited in Specification Sections, shall include motor data and seismic anchorage certifications, where required, and shall include necessary revisions required for equipment other than first named. If Contractor submits incomplete initial Submittal when complete Submittal is required, Submittal may be returned to Contractor without review.

Copy, conform, and distribute reviewed Submittals in sufficient numbers for Contractor's files, Subcontractors, and vendors.

After City's review of Submittal, revise as noted and resubmit as required. Identify changes made since previous Submittal.

Begin no fabrication or work that requires Submittals until return of Submittals not requiring resubmittal. Do not extrapolate from Submittals covering similar work.

Normally, Submittals will be processed and returned to Contractor within 21 Days of receipt. Submittals received after 12:00 pm will be considered as received on the following Day. For Fridays, the following day will be considered to be Monday.

Distribute copies of reviewed Submittals to concerned persons. Instruct recipients to promptly report any inability to comply with provisions.

All Submittals shall be number-identified by Contractor, prior to submission to City, in accordance with the following:

- A. Sequentially number each Submittal (i.e., "1", "2", "3", etc.) as the basis for number identification of Submittals.
- B. Affix the Submittal number under which each Submittal is made on every copy of each Shop Drawing, product data, sample, certification, etc.
- C. Number Installation, Operation, and Maintenance Manuals with original root number of the approved Submittal for the item.
- D. If the Submittal is a resubmittal (including without limitation after an initial Submittal is rejected, returned without review or marked 'Revise as Noted and Resubmit'), add the suffix designation "A" (i.e., a resubmittal of Submittal 1 would be numbered 1A). Subsequent re-submittals would be identified by the Submittal number and sequential letters (i.e., "B", "C", "D", etc.).
- E. All Submittals shall include all information requested by each Specification Section. No partial Submittals will be accepted unless previously authorized by City. In the event a partial Submittal is authorized, each subsequent different Submittal (as opposed to resubmittal) is given a new number.
- F. Deliver Submittals to City at least 30 Days before dates reviewed Submittals will be needed.
- G. Initial Submittal of Installation, Operation, and Maintenance Manuals shall be **45** Days after the date Submittals that pertain to the applicable portion of the Installation, Operation, and Maintenance Manual is satisfactorily reviewed.

The following table lists the number of initial Submittals required from Contractor for each type of submission, to whom Contractor shall distribute the information, and City's distribution of reviewed submissions. If Contractor needs more copies of reviewed Submittals returned to it, then either submit additional copies or make copies from the returned transparency Submittal. Submittals requiring resubmission will require the same quantity and distribution as an initial Submittal.

| <b>SUBMITTAL</b>                                 | <b>Contractor Initial Submittal</b> | <b>City Submittal Return</b>        |
|--|-------------------------------------|-------------------------------------|
|  | <b># of Copies/ Prints/ Samples</b> | <b># of Copies/ Prints/ Samples</b> |
|  |                                     |                                     |
| Shop Drawings                                    | 6                                   | 1                                   |
| Product Data                                     | 6                                   | 1                                   |
| Samples  | 4                                   | 1                                   |
| Materials Safety Data Sheets                     | 3                                   | 1                                   |
| Installation, Operation, and Maintenance Manuals | 4                                   | 1                                   |
| Other Documents                                  | 6                                   | 1                                   |

**Submittal transmittal form, in duplicate, shall contain the following:**

- A. Date, revision date, and Submittal log number.
- B. Project name and City's Project number.
- C. Contractor's name, address, and job number.
- D. Specification Section number clearly identified.
- E. The quantity of Shop Drawings, Product Data, or Samples submitted.
- F. Notification of deviations from Contract Documents.
- G. Materials Safety Data Sheet (MSDS) for each item complying with OSHA's Hazard Communication Standard 29 CFR 1910.1200.
- H. Other pertinent data.

**Submittal shall contain the following:**

- A. Date and revision dates.
- B. Revisions, if any, identified.
- C. Project Name and Project number.
- D. The names of:
- E. Contractor, Subcontractor, Supplier, Manufacturer, and separate detailer, when pertinent.
- F. Identification of product material by location within the Project.
- G. Relation to adjacent structure or materials.
- H. Field dimensions, clearly identified as such.
- I. Specification Section number and applicable detail reference number on the Drawings.
- J. Applicable reference standards.
- K. A blank space, on each Drawing or data sheet, 5" x 4" for the City's stamp.
- L. Identification of deviations from Contract Documents.
- M. Contractor's stamp, initialed or signed, with language certifying the review of Submittals, verification of field measurements, construction criteria and technical standards in compliance with Contract Documents.

**Resubmission requirements:**

- A. Revise initial Shop Drawings as required and resubmit as specified for initial Submittals.
- B. Indicate on Shop Drawings any changes that have been made other than those requested by City.
- C. Submit new Product Data and Samples as required for initial Submittals.
- D. Revise initial Installation, Operation, and Maintenance Manual(s) as required and resubmit as specified for initial Submittals.

**Number of resubmissions:**

One (1) reexamination of Contractor's Submittals that have been returned for correction or replacement will be included in City's budget. Any additional reexamination of Contractor's Submittals will be considered additional scope services to be paid by Contractor through City. Contractor shall pay City (or City may deduct from any progress or final payment), for engineering personnel, on an hourly basis at 2.5 times direct payroll expenses, and for consultant personnel time at 1.25 times the amount billed City.

**Schedule of Shop Drawing and Sample Submittals**

- A. Submit preliminary Schedule of Shop Drawing and Sample Submittals as required by Document 00700 (General Conditions). Submit two copies of final and accepted Schedule of Shop Drawings and Sample Submittals as required in this Document.
- A. Schedule of Shop Drawing and Sample Submittals will be used by City to schedule its activities relating to review of Submittals. Schedule of Submittals shall indicate a spreading out of Submittals and early Submittals of long-lead-time items and of items that require extensive review.
- B. Schedule of Shop Drawing and Sample Submittals will be reviewed by City and shall be revised and resubmitted until accepted by City.
- D. Unless otherwise specified, make Submittals in groups containing all associated items to assure that information is available for checking each item when it is received. Identify on the Submittal which Submittals should be reviewed together.

**Safety Program**

Submit three (3) copies of Safety Program specific to these Contract Documents to City within 15 days after the Notice to Proceed is issued.

**Progress Schedule**

- A. Submit three (3) print copies of schedule at each of the following times:
  - 1. Initial Progress Schedule at the Preconstruction Conference.
  - 2. Original Schedule within 20 Days of the Notice to Proceed date.
  - 3. Adjustments to the Schedule as required.
  - 4. Schedule updates monthly, seven (7) Days prior to monthly progress meeting.
- B. Submit four (4) copies of the reports listed in this document with:
  - 1. Initial Schedule
  - 2. Original Schedule
  - 3. Each monthly Schedule update
- C. Progress Schedules and Reports shall be submitted on a CD Ram, using software described in this Document, in addition to hard copies specified in this paragraph. Electronic files shall be complete copies, including all programs and electronic coding

**Product Data**

Within ten (10) Days after Start Date of the Contract Time, submit two (2) copies of complete list of major products proposed for use, with name of manufacturer, telephone number, trade name, and model number of each product. Tabulate product data by Specification Section.

For products specified only by reference standards, give manufacturer, trade name, model or catalog designation, and reference standards.

**Product or Catalog Data:**

- A. Manufacturer's standard drawings shall be modified to delete non-applicable data or include applicable data.
- B. Manufacturer's catalog sheets, brochures, diagrams, schedules, charts, illustrations and other standard descriptive data:
  - 1. Mark each copy to identify pertinent materials, products, or models.
  - 2. Show dimensions and clearances required, performance characteristics and capacities, wiring diagrams and controls.
  - 3. Include applicable MSDS.

**Supplemental Data:**

1. Submit number of copies that Contractor requires, plus two (2) copies that will be retained by City.
  2. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturer's standard data to provide information unique to Project.
- D. Provide copies for Project Record Documents described in this Document.

**Shop Drawings**

- A. Minimum Sheet Size: 8½ inches by 11 inches. All others: Multiples of 8½ inches by 11 inches, 34 inches by 44 inches maximum.
- B. Original sheet or reproducible transparency will be marked with City's review comments and returned to Contractor.
- C. Mark each copy to identify applicable products, models, options, and other data; supplement manufacturers' standard data to provide information unique to Work.
- D. Include manufacturers' installation instructions when required by Specification Section.
- E. If Contractor submits Shop Drawings for items that Shop Drawings are not specified, City will not be obliged to review them.
- E. Contractor is responsible for procuring copies of Shop Drawings for its own use as it may require for the progress of the Work.
- F. Shop Drawings shall be drawn to scale and completely dimensioned, giving plan view together with such sectional views as are necessary to clearly show construction detail and methods.
- H. After Shop Drawings are approved contractor shall provide an electronic copy of them to the City when requested.

**Samples**

- A. Submit full range of manufacturers' standard colors, textures, and patterns for City's selection.
- B. Submit samples to illustrate functional and aesthetic characteristics of product, with integral parts and attachment devices. Coordinate Submittal of different categories for interfacing work.
- C. Include identification on each sample, giving full information.
- D. Sizes: Unless otherwise specified, provide the following:
  1. Paint Chips: Manufacturers' standard
  2. Flat or Sheet Products: Minimum 6 inches square, maximum 12 inches square
  3. Linear Products: Minimum 6 inches, maximum 12 inches long
  4. Bulk Products: Minimum 1 pint, maximum 1 gallon
- E. Full size samples may be used in Work upon approval by City.
- F. Field Samples and Mock-ups (if applicable):
  1. Erect field samples and mock-ups at Site in accordance with requirements of Specification Sections. If testing is conducted, record and certify results and full Contract compliance.
  2. Modify or make additional field samples and mock-ups as required to provide appearance and finishes approved by City.
  3. Approved field samples and mock-ups may be used in Work upon approval by City.
  4. Construct or prepare as many additional Samples as may be required, as directed by the City, until desired textures, finishes, and/or colors are obtained.
  5. Accepted Samples and mock-up shall serve as the standard of quality for the various units of work.
- G. No review of a Sample shall be taken in itself to change or modify the requirements in the Contract Documents.
- H. Finishes, materials, and workmanship in the completed Work shall match accepted Samples

## **Quality Assurance Control Submittals**

### **A. Test Reports:**

Submit three (3) copies; One copy will be marked with City's review comments and returned to Contractor.

Indicate that material or product conforms to or exceeds specified requirements.

Reports may be from recent or previous tests on material or product, but shall be acceptable to City.

Comply with requirements of each individual Specification Section.

### **B Certificates:**

Submit five (5) copies; One copy will be marked with City's review comments and returned to Contractor.

Indicate that material or product conforms to or exceeds specified requirements.

Submit supporting reference data, affidavits, and certifications as appropriate.

Certificates may be recent or from previous test results on material or product, but shall be acceptable to City.

### **C. Manufacturers' Instructions:**

Submit three (3) copies; One copy will be marked with City's review comments and returned to Contractor.

Include manufacturers' printed instructions for delivery, storage, assembly, installation, startup, adjusting, and finishing.

Identify conflicts between manufacturers' instructions and Contract Documents.

### **D. Material Safety Data Sheets:**

In addition to Material Safety Data Sheets (MSDS) otherwise required by the Contract Documents, submit five (5) copies for any paints, solvents, thinners, varnish, lacquer, glues and adhesives, mastics, or other materials needed for the Project as required by the individual Specification Sections or as otherwise specified in the Contract Documents.

MSDS required for a Submittal shall be submitted with product data in order for the Submittal to be reviewed.

### **E. Installation, Operations and Maintenance Manuals**

Sheet Size: 8½ x 11 inch

Drawing Size: Reduce drawings or diagrams to an 8½ x 11 inch or 11 x 17 inch size. However, where reduction is not practical to ensure readability, fold larger drawings separately and place in vinyl envelopes bound into the binder. Identify vinyl envelopes with drawing numbers.

Binding: Bind in stiff, metal-hinged, three-ring binder(s) with standard three-hole punching.

Multiple Items: Multiple items may be combined into one (1) binder; tab each section with plastic-coated dividers.

Page Protectors: Provide plastic sheet lifters prior to first page and following last page.

Binder title: Include the following title on front and spine of binder:

#### **PROJECT TITLE**

INSTALLATION, OPERATION, AND MAINTENANCE MANUAL, 200\_

Contents:

#### **1. Introductory Information:**

- a. Title page providing the same information as paragraph 0 above
- b. Contractor's name, address, and telephone number
- c. Table of Contents

2. Include, at a minimum, the following detailed information for each item as applicable and as required by individual Specification Sections:
  - a. Equipment function, normal operating characteristics, limiting operations.
  - b. Assembly, disassembly, installation, alignment, adjustment, and checking instructions.
  - c. Operating instructions for startup, routine and normal operation, regulation and control, shutdown, and emergency conditions.
  - d. Lubrication and maintenance instructions including specific type and amount of lubricant and recommended lubrication interval.
  - e. Guide to "troubleshooting."
  - f. Parts list and predicted life of parts subject to wear.
  - g. Outline, cross-section, and assembly drawings; engineering data; and electrical diagrams, including elementary diagrams, labeled wiring diagrams, connection diagrams, word description of wiring diagrams and interconnection diagrams.
  - h. Test data and performance curves.
  - i. A list of recommended spare parts with a price list and a list of spare parts provided under this Contract.
  - j. Copies of parts lists or other documents packed with equipment when delivered.
  - k. Instrumentation or tag numbers relating the equipment back to the Contract Documents.
  - l. Index
3. Final Submittal: Upon favorable review of Installation, Operation, and Maintenance Manual(s) by City, deliver nine (9) additional hard copies and one (1) electronic media format copy of the final approved Installation, Operation, and Maintenance Manual(s). Electronic media format copy shall include all tables, charts, drawings, codes and all other matters reflected in hard copies. The City utilizes various media for records-keeping and facilitating maintenance functions.
4. Electronic Media Format: Compatible with City's current software. All files shall be delivered on a unique CD-ROM.
5. Draft Submittal: The Draft Submittal of Installation, Operation and Maintenance Manuals shall be submitted to City prior to equipment startup.

**F. Project Record Documents**

Submit one copy of each of the Project Record Documents listed in these Documents.

**G. Delay of Submittals**

Delay of Submittals by Contractor is considered avoidable delay. Liquidated damages incurred because of late Submittals will be assessed to Contractor.

**H. Optional Review Meeting**

At the Contractor's request, in order to facilitate the timeliness of the review process, the City may schedule a meeting to review the materials submitted. If this option is exercised, the following requirements apply:

Request a meeting date with the City at least ten (10) Business Days in advance.

Provide the complete package of Submittal information at least five (5) Business Days in advance of the meeting.

The meeting shall take place at City's office. City will provide the authorized staff to review and respond on the Submittal information during the meeting.

Make available for this meeting the job superintendent and/or foreman, Contractor's safety officer, and someone knowledgeable of all the items submitted and authorized to make substitutions or changes.

**4.3 Conformity with Contract Documents and Allowable Deviations**

Work and materials shall conform to the lines, grades, typical cross sections, dimensions and materials requirements, including tolerances, shown on the plans or indicated in the specifications. Although measurements, sampling, and testing may be considered evidence as to conformity, City shall be the sole judge as to whether the work or materials deviate from the plans and specifications, and City's decision as to any allowable deviations therefrom shall be final.

**4.4 Order of Work**

When required by the Contract Documents, Contractor shall follow the sequence of operations as set forth therein. Full compensation for conforming to those requirements will be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

**4.5 Drawings and Data to be Furnished by City**

City may issue supplemental Drawings for the construction work under the Contract. These Drawings will show additional details as required for construction purposes. Installation instructions for City-furnished materials will be furnished if required.

**4.6 Superintendence**

Contractor shall designate, in writing before starting Work, an authorized representative who shall have complete authority to represent and act for Contractor. Said authorized representative of Contractor shall normally be present at the Site of the Work at all times while Work is actually in progress on the Contract. During any period when Work is suspended, arrangements acceptable to City shall be made for any emergency work which may be required.

Whenever Contractor or an authorized representative is not present on any part of the Work where it may be desired to give direction, orders will be given by City, which shall be received and obeyed by the superintendent who may have charge of the particular work in reference to which the orders are given. Any order given by City, not otherwise required by the Specifications to be in writing, will, on request of Contractor, be given or confirmed by City in writing.

Contractor shall designate, in writing, the names and telephone numbers of at least three representatives who could be contacted at any time in the event that an emergency occurs.

**4.7 Character of Workers**

Any subcontractor, or person employed by Contractor or subcontractor, who fails or refuses to carry out the directions of City, or appears to City to be incompetent or to act in a disorderly or improper manner, shall be removed from the Work immediately on the written request of City, and such person shall not again be employed on the Work.

**4.8 Layout of Work and Surveys – Not Applicable**

All Work shall be done to the lines, grades, and elevations indicated on the Drawings.

City shall provide basic horizontal and vertical control points to be used as datums for the Work. All additional survey, layout, and measurement work shall be performed by Contractor as a part of the Work.

Contractor shall provide at its cost an experienced instrument person, competent assistants, and such instruments, tools, stakes and other materials required to complete the survey, layout, and measurement work. In addition, Contractor shall furnish at its cost competent persons and such tools, stakes, and other materials as City (and/or any Engineer) may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by Contractor.

Contractor shall keep City informed, a reasonable time in advance, of the times and places at which it wishes to do Work, so that any checking deemed necessary by City may be done with minimum inconvenience to City and minimum delay to Contractor.

Contractor shall remove and reconstruct Work which is improperly located.



#### **4.9 Warranty and Inspection**

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

**Extended Guarantees:** Any guarantee exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply City with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.

**Inspection.** City shall at all times have access to the Work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the quality of performance are in accordance with the requirements and intentions of the Drawings and Specifications. All Work done and all materials furnished shall be subject to City's inspection and approval.

The day-to-day inspection performed by the various inspectors employed by City shall not constitute approval or ratification of Work improperly done by Contractor. City is the only person authorized to recommend acceptance or rejection of Work and materials.

The presence or absence of an inspector during performance of the Work shall not relieve Contractor of any obligation to fulfill the Contract. It shall be the duty of Contractor to see that all provisions are complied with in detail, irrespective of the inspection given the Work during its progress by City or representatives of City. Any plan or method suggested to Contractor by City or an inspector, but not specified or required, if adopted or followed in whole or in part, shall be used at the risk and responsibility of Contractor; and City and City will assume no responsibility therefore.

Should it be considered necessary or advisable by City at any time before Acceptance of the entire Work to make an examination of Work already completed by removing or tearing out same, Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such Work is found to be defective or nonconforming in any material respect, due to the fault of Contractor or subcontractors, Contractor shall pay all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract Price to compensate Contractor for the additional services involved in such examination and reconstruction and, if completion of the Work has been delayed thereby, Contractor shall, in addition, be granted an appropriate extension of time.

Projects financed in whole or part with federal or state funds shall be subject to inspection at all times by the federal or state agency involved.

Any inspection, evaluation, or test performed by or on behalf of City relating to the Work is solely for the benefit of City, and shall not be relied upon by Contractor. Contractor shall not be relieved of its absolute obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by City, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

- A. Execute Contractor's submittals and assemble warranty documents, and installation, operations and maintenance manuals, executed or supplied by Subcontractors, suppliers, and manufacturers.
- Provide table of contents and assemble in 8½ inches by 11 inches three-ring binder with durable plastic cover, appropriately separated and organized.
  - Include contact names and phone numbers for City personnel to call during warranty period.
  - Assemble in Specification Section order.
- B. Submit material prior to final application for payment.
- For equipment put into use with City's permission during construction, submit within 14 Days after first operation.
  - For items of Work delayed materially beyond Date of Substantial Completion, provide updated submittal within 14 Days after acceptance, listing date of acceptance as start of warranty period.
  - Warranties are intended to protect City against failure of Work and against deficient, defective and faulty materials and workmanship, regardless of sources.
- C. Limitations: Warranties are not intended to cover failures that result from the following:
- Unusual or abnormal phenomena of the elements
  - Vandalism after Substantial Completion
  - Insurrection or acts of aggression including war
- D. Related Damages and Losses: Remove and replace Work which is damaged as result of defective Work, or which must be removed and replaced to provide access for correction of warranted Work.
- E. Warranty Reinstatement: After correction of warranted Work, reinstate warranty for corrected Work to date of original warranty expiration or to a date not less than one year after corrected Work was done, whichever is later.
- F. Replacement Cost: Replace or restore failing warranted items without regard to anticipated useful service lives.
- G. Warranty Forms: Submit drafts to City for approval prior to execution. Forms shall not detract from or confuse requirements or interpretations of Contract Documents.
- Warranty shall be countersigned by manufacturers.
  - Where specified, warranty shall be countersigned by Subcontractors and installers.
  - Rejection of Warranties: City reserves right to reject unsolicited and coincidental product warranties that detract from or confuse requirements or interpretations of Contract Documents.
- H. Term of Warranties: For materials, equipment, systems, and workmanship, warranty period shall be one year minimum from date of Final Completion of entire Work except where:
- Detailed specifications for certain materials, equipment or systems require longer warranty periods.
  - Materials, equipment or systems are put into beneficial use of City prior to Final Completion as agreed to in writing by City.
- I. Warranty of Title: No material, supplies, or equipment for Work under Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with improvements and appurtenances constructed or placed thereon by Contractor, to City free from any claim, liens, security interest, or charges, and further agrees that neither Contractor nor any person, firm, or corporation furnishing any materials or labor for any Work covered by Contract shall have right to lien upon premises or improvement or appurtenances thereon. Nothing contained in this paragraph, however, shall defeat or

impair right of persons furnishing materials or labor under bond given by Contractor for their protection or any rights under law permitting persons to look to funds due Contractor in hands of City.

**4.10 Defective and Unauthorized Work**

All Work which has been rejected shall be remedied promptly (no later than five days) or removed and replaced by Contractor in an acceptable manner at no additional cost to City.

Payment will not be made for any Work done beyond the lines and grades shown on the Drawings or established by City, or any extra Work done without written authority, and such Work will be -considered as unauthorized. Work so done may be ordered remedied, removed, or replaced.

If Contractor should fail to comply promptly with any order of City made under the provisions of this, City may cause rejected or unauthorized Work to be remedied, removed, or replaced, and the costs thereof to be deducted from any moneys due or to become due Contractor.

**4.11 Construction Equipment and Plant**

Contractor shall provide and use construction equipment and plant capable of producing the quality and quantity of Work required. Construction equipment shall be identified by readily visible numbers. If ordered, Contractor shall remove unsatisfactory construction equipment and discontinue the operation of unsatisfactory plants.

**4.12 Substantial Completion, Final Completion and Final Acceptance – Not Applicable**

**A. Substantial Completion**

The Work (or a specified part thereof) has progressed to the point where, in the opinion of City as evidenced by a Certificate of Substantial Completion, the Work is sufficiently complete, in accordance with Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work (or specified part) is complete and ready for final acceptance as evidenced by written recommendation of City for final acceptance. The terms “Substantially Complete” and “Substantially Completed” as applied to all or part of the Work refer to Substantial Completion thereof.

1. When Contractor considers Work or designated portion of the Work as Substantially Complete, submit written notice to City, with list of items remaining to be completed or corrected.
2. Within reasonable time, City will inspect to determine status of completion.
3. Should City determine that Work is not Substantially Complete, City will promptly notify Contractor in writing, listing all defects and omissions.
4. Remedy deficiencies and send a second written notice of Substantial Completion. City will reinspect the Work. If deficiencies previously noted are not corrected on reinspection, then Contractor shall pay City’s cost of the reinspection.
5. When City concurs that Work is Substantially Complete, City will issue a Certificate of Substantial Completion, accompanied by Contractor’s list of items to be completed or corrected as verified by City.
6. A punch list examination will be performed upon Substantial Completion. One follow-up review of punch list items for each discipline will be provided.

**B. Final Completion**

When the Work authorized by the Contract has been completed, City will make the final inspection. If City determines that the Work has been completed, in accordance with the Contract, City will recommend that the Work be accepted. Contractor will be relieved of the responsibility imposed by Section 6.15, Contractor’s Responsibility for Work, on the date of Acceptance.

Final Completion occurs when Work meets requirements for City’s Final Completion. When Contractor considers Work is Finally Complete, submit written certification that:

1. Contractor has inspected Work for compliance with Contract Documents, and all requirements for Final Acceptance have been met.

2. Except for Contractor maintenance after Final Acceptance, Work has been completed in accordance with Contract Documents and deficiencies listed with Certificate of Substantial Completion have been corrected. Equipment and systems have been tested in the presence of City, and are operative.
3. Work is complete and ready for final inspection.
4. All systems having been tested and accepted as having met requirements of Contract Documents.
5. All required instructions and training sessions having been given by Contractor.
6. All closeout documents having been submitted by Contractor, reviewed by City and accepted by City.
7. All punch list work, as directed by City, having been completed by Contractor.
8. All final cleanup and completion activities having been completed by Contractor.

In addition to submittals required by Contract Documents, provide submittals required by governing authorities and submit final statement of accounting giving total adjusted Contract Sum, previous payments, and sum remaining due.

When City finds Work is acceptable and final closeout submittals are complete, City will issue final Change Order reflecting approved adjustments to Contract Sum not previously made by Change Order. Should City determine that Work is incomplete or defective:

1. City promptly will so notify Contractor, in writing, listing the incomplete or defective items.
2. Promptly remedy the deficiencies and notify the City when it is ready for reinspection.
3. When City determines that the Work is acceptable under the Contract Documents, City will request Contractor to make closeout submittals.

Final adjustments of accounts:

1. Submit a final statement of accounting to City, showing all adjustments to the Contract Sum and complete and execute Document 00650 (Contract and Release of Any and All Claims).
2. If so required, City shall prepare a final Change Order for submittal to Contractor, showing adjustments to the Contract Sum that were not previously made into a Contract Modification.

**C. Final Acceptance**

The City will record a "Notice of Completion" after the City accepts the project as complete. The final payment including without limitation on retentions will be made 35 days after the Notice of Completion has been recorded by the County, provide there are no outstanding punchlist items or deficiencies in the project. The final payment will be fewer sums as may be lawfully retained under any provisions of the contract documents or by law.

**D. Project Guarantee**

Requirements for Contractor's guarantee of completed Work are included in this Document. Guarantee Work done under Contract against failures, leaks, or breaks or other unsatisfactory conditions due to defective equipment, materials, or workmanship, and perform repair work or replacement required, at Contractor's sole expense, for period of one year from date of Final Acceptance.

Neither recordation of Final Acceptance nor final certificate for payment nor provision of the Contract nor partial or entire use or occupancy of premises by City shall constitute acceptance of Work not done in accordance with Contract Documents nor relieve Contractor of liability in respect to express warranties or responsibility for faulty materials or workmanship.

City may make repairs to defective Work as set forth in this Document.

If, after installation, operation, or use of materials or equipment to be provided under Contract proves to be unsatisfactory to City, City shall have right to operate and use materials or equipment until said materials and equipment can, without damage to City, be taken out of service for correction or replacement. Period of use of defective materials or equipment pending correction or replacement shall in no way decrease guarantee period required for acceptable corrected or replaced items of materials or equipment.

Nothing in this Document shall be construed to limit, relieve, or release Contractor's, Subcontractors', and equipment suppliers' liability to City for damages sustained as result of latent defects in equipment caused by negligence of suppliers' agents, employees, or Subcontractors. Stated in another manner, warranty contained in the Contract Documents shall not amount to, nor shall it be deemed to be, waiver by City of any rights or remedies (or time limits in which to enforce such rights or remedies) it may have for defective workmanship or defective materials under laws of this State pertaining to acts of negligence.

**4.13 Use Prior to Final Acceptance - Not Applicable**

City may take possession of, and use, all or part of the Project prior to Final Acceptance.

## **SECTION 5. CONTROL OF MATERIALS**

**5.1 Source of Supply and Quality of Materials.**

Contractor shall furnish all materials required to complete the work, except materials that are designated in the specifications to be furnished by City.

Only materials conforming to the requirements of the specifications shall be incorporated in the work.

The materials furnished and used shall be new, except as may be provided elsewhere in these specifications, on the plans or in the Special Provisions. The materials shall be manufactured, handled, and use in a workmanlike manner to ensure completed work in accordance with the plans and specifications. Materials to be used in the work will be subject to inspection and tests by City or City's designated representative. Contractor shall furnish without charge such samples as may be required.

Contractor shall furnish City a list of Contractor's sources of materials and the locations at which those materials will be available for inspection. The list shall be submitted on a City approved form and shall be furnished to City in sufficient time to permit inspection and testing of materials to be furnished from the listed sources in advance of their use. City may inspect, sample or test materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until City is assured by Contractor of the cooperation and assistance of both Contractor and the supplier of the material. Contractor shall assure that City or City's authorized representative has free access at all times to the material to be inspected, sampled or tested. It is understood that the inspections and tests if made at any point other than the point of incorporation in the work in no way shall be considered a guaranty of acceptance of the material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by the State shall not relieve Contractor or Contractor's suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets and parts lists, which are furnished with certain Sections or materials incorporated in the work, shall be delivered to City before acceptance of the contract.

Reports and records of inspections made and tests performed, when available at the site of the work, may be examined by Contractor.

**5.2 City-Furnished Materials – Not Applicable**

Materials which are listed as City-furnished materials in the Special Provisions will be available to Contractor free of charge.

Contractor shall submit a written request to City for the delivery of City-furnished materials at least 15 days in advance of the date of its intended use, except that the written request for the delivery of City-furnished sign

panels for roadside signs and overhead sign structures shall be submitted at least 30 days in advance of their intended installation. The request shall state the quantity and the type of each material.

The locations at which City-furnished materials will be available to Contractor free of charge will be designated in the Special Provisions. In those cases said materials shall be hauled to the site of the work by Contractor at Contractor's expense, including any necessary loading and unloading that may be involved. If the locations are not designated in the Special Provisions, City-furnished materials will be furnished to Contractor free of charge at the site of the project. In either case, all costs of handling and placing City-furnished material shall be considered as included in the price paid for the contract item involving the State-furnished material.

Contractor shall be responsible for all City-furnished materials furnished to Contractor, and shall pay all demurrage and storage charges. City-furnished materials lost or damaged from any cause whatsoever shall be replaced by Contractor at Contractor's expense. Contractor shall be liable to City for the cost of replacing City-furnished material and those costs may be deducted from any moneys due or to become due Contractor. All City-furnished material that is not used on the work shall remain the property of the State and shall be delivered to City.

City reserves right to furnish materials as it deems advisable, and Contractor shall have no claims for costs and overhead and profit on such materials.

### **5.3 Storage of Materials**

Sections or materials to be incorporated in the work shall be stored in such a manner as to ensure the preservation of their quality and fitness for the work, and to facilitate inspection.

### **5.4 Defective Materials**

All materials which City has determined to not conform to the requirements of the plans and specifications will be rejected whether in place or not. They shall be removed immediately from the site of the work, unless otherwise permitted by City. No rejected material, the defects of which have been subsequently corrected, shall be used in the work unless approval in writing has been given by City. Upon failure of Contractor to comply promptly with any order of City made under the provisions in this Section 5, City shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any moneys due or to become due Contractor.

### **5.5 Plant Inspection**

City may inspect the production of material, or the manufacture of products at the source of supply.

Plant inspection, however, will not be undertaken until City is assured of the cooperation and assistance of both Contractor and the material producer. City or City's authorized representative shall have free entry at all times to those parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. City assumes no obligation to inspect materials at the source of supply.

### **5.6 Certificates of Compliance**

A Certificate of Compliance shall be furnished prior to the use of any materials for which these specifications or the Special Provisions require that a certificate be furnished. In addition, when so authorized in these specifications or in the Special Provisions, City may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the specifications. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve Contractor of the requirements of the plans and specifications and any material not conforming to the requirements will be subject to rejection whether in place or not.

City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by City.

**5.7 State Specification Numbers – Not Applicable**

The State Specification number of material furnished on the contract shall conform to the number specified in these specifications or the Special Provisions for the material involve, except that material conforming to a later specification issue will be acceptable.

**5.8 Testing - Not Applicable**

Unless otherwise specified, all tests shall be performed in accordance with the methods used by the Department of Transportation and shall be made by the Engineer or the Engineer's designated representative.

The Department has developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the specifications as California Test. Copies of individual California Tests are available at the Transportation Laboratory, Sacramento, California, and will be furnished to interested persons upon request.

Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

| Properties               | California Test |
|--------------------------|-----------------|
| Relative Compaction      | 216 or 231      |
| Sand Equivalent          | 217             |
| Resistance (R-value)     | 301             |
| Grading (Sieve Analysis) | 202             |
| Durability Index         | 229             |

Whenever a reference is made in the specifications to a California Test by number, it shall mean the California Test in effect on the day the Notice to Contractors for the work is dated.

Whenever the specifications provide an option between 2 or more tests, the Engineer will determine the test to be used.

Whenever a reference is made in the specifications to a specification, manual or test designation either of the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual or test designation in effect on the day the Notice to Contractors for the work is dated. Whenever the specification, manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of those reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions in Section 5, "Control of Materials," and shall not constitute a waiver of the City's right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by the Contractor at the Contractor's expense. The number of the samples and test specimens shall be entirely at the discretion of the Engineer. Unidentified metal products, such as sheet, plate and hardware shall be subject to the requirements of Section 55-2.07, "Unidentified Stock Material."

When requested by the Engineer, the Contractor shall furnish, without charge, samples of all materials entering into the work, and no material shall be used prior to approval by the Engineer, except as provided in Section 5.6, "Certificates of Compliance." Samples of material from local sources shall be taken by or in the presence of the Engineer; otherwise, the samples will not be considered for testing.

Whenever the provisions of this Section refer to tests or testing, it shall mean tests to assure the quality and to determine the acceptability of the materials and work.

- A. City will select an independent testing and inspection agency or agencies to conduct tests and inspections as indicated on Drawings, in Specifications and as required by governing authorities having jurisdiction.
  - 1. Responsibility for time and costs shall be as indicated in schedule below. All time and costs for Contractor's service related to such tests and inspections shall be included in Contract Time and Contract Sum.
  - 2. Notify City in writing (and, if provided, on inspection request form provided by City) and, if directed by City, testing and inspection agency, when Work is ready for specified tests and inspections. Deliver this written notification at least two (2) working days before the requested inspection date.
- B. Contractor pays for all additional charges by testing and inspection agencies and governing authorities having jurisdiction due to the following: The amount deducted will be determined by City and deducted from moneys due or to become due to Contractor.
  - 1. Contractor's failure to properly schedule or notify testing and inspection agency or authorities having jurisdiction.
  - 2. Costs for testing of materials and work found to be unacceptable, as determined by the test performed by City.
  - 3. Changes in sources, lots, or suppliers of products after original tests or inspections.
  - 4. Changes in means, methods, techniques, sequences, and procedures of construction that necessitate additional testing, inspection, and related services.
  - 5. Changes in mix designs for concrete and mortar after review and acceptance of submitted mix design.
  - 6. Contractor submitted requests to change materials or products, which are accepted, but require testing and/or reinspection beyond original design.
- C. If initial tests or inspections made by the testing and inspection agency reveal that materials do not comply with Contract Documents, or if City has reasonable doubt that materials do not comply with Contract Documents, additional tests and inspections shall be made as directed.
  - 1. If additional tests and inspections establish that materials comply with Contract Documents, City shall pay all costs for such tests and inspections.
  - 2. If additional tests and inspections establish that materials do not comply with Contract Documents, all costs of such tests and inspections shall be deducted from Contract Sum.

If Work requiring inspection is covered by follow-on or follow-up Work before it is inspected, uncover Work so proper inspections can be performed. All costs of such tests and inspections shall be deducted from Contract Sum.

The Contractor shall be responsible for controlling the quality of the material entering the work and of the work performed, and shall perform testing as necessary to ensure control. The test methods used for quality control testing shall be as determined by the Contractor. The results of the testing shall be made available to the Engineer upon request. These tests are for the Contractor's use in controlling the work and will not be accepted for use as acceptance tests.

Full compensation for performing quality control tests and making the results available to the Engineer shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefor.

## **SECTION 6. LEGAL RELATIONS AND RESPONSIBILITY**

### **6.1 Laws to be Observed**

Contractor shall remain informed of and in compliance with all applicable existing and future federal, state, county, and municipal laws, codes, ordinances, rules and regulations, including but not limited to, those cited herein.



## **6.2 Labor Discrimination**

In the performance of the Contract, Contractor shall not discriminate against an employee or applicant for employment because of race, color, religious creed, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status. Section 1735 of the Labor Code and Sections 12990 et seq. of the Government Code are incorporated herein in full by this reference.

Contractor and each subcontractor shall submit monthly an employee utilization report, substantially conforming to U.S. Department of Labor Form CC-257 (Rev. 9/78 or successor).

## **6.3 Employment of Labor**

In the employment of labor in the performance of the Contract, City desires that Contractor and all subcontractors shall, wherever possible, give first consideration to residents of the County.

## **6.4 Prevailing Wages**

In accordance with provisions of Section 1773 of the Labor Code, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, and similar purposes available to the particular craft, classification, or type of workers employed on the work. These rates are set forth in the latest determination obtained from the Director, which is on file in the office of the Director of Public Works and incorporated herein by reference the same as though set out in full. Post copy of general prevailing rates at site.

Contractor shall forfeit as a penalty to City, \$50 for each day, or portion thereof, for each worker paid less than the stipulated prevailing rates for any public work done under the Contract by Contractor or by any subcontractor in violation of the provisions of the Labor Code, particularly Sections 1770 through 1780, inclusive.

Each contractor and 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 by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in accordance with the provisions of Section 1776 of the Labor Code.

Contractor shall inform City of the location of the payroll records, including the street address, city, and county, and shall, within 5 working days, provide a notice of a change in location and address. The responsibility for compliance with payroll record requirements imposed by said Section 1776 of the Labor Code is on the prime Contractor.

A copy of all payrolls shall be submitted weekly to City. Payrolls shall contain the full name, address, and Social Security number of each employee, his or her correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and Social Security number need only appear on the first payroll on which his or her name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract. The "Statement of Compliance" shall be on forms furnished by City or on any form with identical wording. Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

If, by the 15th of the month, Contractor has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the first of that month, City will retain an amount equal to 10 percent of the estimated value of the work performed (exclusive of mobilization) during the month from the next monthly estimate, except that such retention shall not exceed \$10,000 nor be less than \$1,000. Retentions for failure to submit satisfactory payrolls shall be additional to all other retentions provided for in the Contract. The retention for failure to submit satisfactory payrolls for any monthly period will be released for payment when the monthly estimate for partial payments next following the date that all such payrolls for which the retention was made are submitted.

Contractor and each subcontractor shall preserve their respective payroll records for a period of 4 years from the date of filing a Notice of Completion and Acceptance under the Contract.

The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the work, shall be considered a part of the work to be performed under the Contract and any laborers, workers, or mechanics working on such machinery, equipment, or tools, shall be subject to all of the requirements relating to labor set forth in the Contract.

The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the Contract or on contracts under the supervision of City, shall be considered a part of the work to be performed under the Contract and any laborers, workers, or mechanics working on such plants shall be subject to all of the requirements relating to labor set forth in the Contract.

#### **6.5 Hours of Labor and Work**

Eight hours' labor constitutes a legal day's work. Contractor shall forfeit as a penalty to City, \$25 for each worker employed in the execution of the Contract by Contractor or by any subcontractor for each day during which such worker is required or permitted to labor more than 8 hours in violation of Labor Code Sections 1810 to 1815, inclusive, except as provided for under Labor Code Section 1815.

#### **6.6 Apprentices**

Contractor's attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the Labor Code concerning the employment of apprentices by Contractor or any subcontractor.

Section 1777.5 requires Contractor or subcontractor employing persons, as defined, in any apprenticeable occupation to apply to the joint apprenticeship committee which is nearest the Site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the Contract. The ratio of work performed by apprentices to journeymen in such cases shall not be less than 1 hour to 5 hours, except when the committee finds that any one of the following conditions is met:

- A. In the event unemployment for the previous 3-month period in the project Site area exceeds an average of 15 percent, or
- B. In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or
- C. If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis, or
- D. If assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his/her life or the life, safety, or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

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

Contractor and any subcontractor shall comply with the requirements of Section 1777.5 and 1777.6 in the employment of apprentices.

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

**6.7 Permits and Licenses**

Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the prosecution of the work, except as provided in the Special Provisions.

**6.8 Patents and Copyrights**

Contractor shall assume all costs including any costs of defense arising from the use of any copyrighted composition, secret process, patented or unpatented invention, Section, equipment, device, or appliance manufactured, furnished, or used in the performance of the Contract, including their use by City, unless otherwise specifically stipulated in the Specifications.

**6.9 Public Safety and Traffic Control**

Contractor shall furnish, erect, and maintain such fences, barriers, lights, and signs and provide such flagging and guards as are necessary in the opinion of City or public agency having jurisdiction, to give adequate warning to the public of the construction and of any dangerous condition to be encountered as a result thereof.

Without limiting the foregoing, signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in Part 6 of the MUTCD and of the MUTCD California Supplement. Signs or other protective devices furnished and erected by Contractor, at Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by Contractor, at Contractor's expense, shall be approved by City as to size, wording and location.

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.

Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the work, and other forces will continue routine maintenance of existing systems. Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered. Except as otherwise provided for construction area signs in Section 12, "Construction Area Traffic Control Devices," furnishing, installing and removing covers will be paid for as extra work as provided in Section 3.3.

No lane closure shall be permitted before 7:00 A.M. or after 5:00 P.M. Mondays through Fridays. Only under special conditions shall the City have the right to permit lane closure before 7:00 A.M. and after 5:00 P.M.

All costs of the above shall be included in the price bid for the various bid items and no special compensation will be allowed.

The Contractor shall maintain a minimum of two (2) travel lanes for traffic use, one in each direction at all times.

#### **6.10 Accident Prevention**

Contractor shall comply with the California Occupational Safety and Health Act (Labor Code Section 6300 et seq.) and Title 8 of the Code of Regulations, and will also take, or cause to be taken, such additional measures as may be necessary for the prevention of accidents.

Designate one of Contractor's staff as "Site Safety Officer" whose duties shall include the responsibility for enforcing the environmental protection provisions of the Contract Documents including safety and health, the requirements of the Occupational Safety and Health Act, and other applicable federal, state and local standards. Submit for review by City Contractor's intended traffic flow plan, security plan, program for temporary structures, housecleaning plan, demolition program, and environmental safety and health plan. After review by City, the implementation and enforcement of these plans shall become the responsibility of the Site Safety Officer. Any changes in the plans shall be requested by Contractor through the Site Safety Officer for written concurrence by City.

Prior to commencement of Work Contractor shall (1) submit proposals in writing for effectuating provisions for accident prevention, and (2) meet in conference with City to discuss and develop mutual understandings relative to administration of an overall safety program.

During the performance of Work under the Contract, Contractor shall institute controls and procedures for the control and safety of persons visiting the job-Site.

Contractor shall maintain an accurate record of, and shall report to City in writing, exposure data and all accidents resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment incident to Work performed under the Contract.

City will notify Contractor of any noncompliance with the foregoing provisions. Contractor shall, after receipt of such notice, immediately take corrective action. If Contractor fails or refuses to comply immediately, the matter will be referred to the proper authority. No part of the time lost due to any stop order issued by proper authority shall be made the subject or claim for extension of time or for extra costs or damages by Contractor.

Compliance with the provisions of this Section by Subcontractors will be the responsibility of Contractor.

#### **6.11 Explosives and Stream Pollution**

This section not applicable to City projects.

#### **6.12 Fire Protection Plan**

Within 15 days after Notice of Proceed submit one copy of a fire protection plan that has been reviewed and approved by the Santa Clara County Fire Department. It is recommended that the plan include, but not be limited to, a discussion of the following items:

- A Equipment spark arresters
- B Fire-extinguishing equipment on hand
- C Method of operation in case of fire
- D Notification to authorities of any fire
- E Access available during performance of Work
- F Educating workers of fire protection plan
- G Storage protection for flammable materials
- H Ventilation and illumination equipment

#### **6.13 Interference with Fire Hydrants, Highways, and Fences**

Contractor shall conduct operations as not too close or obstruct any portion of any highway, road, or street, or prevent in any way free access to fire hydrants until permits have been obtained therefor from the proper

authorities. If any highway required to be kept open shall be rendered unsafe by Contractor's operations, Contractor shall make such repairs or provide such temporary guards as shall be acceptable to the authorities having jurisdiction and to City. Any highway or street maintenance or repair work required by local authorities in connection with necessary operations under the Contract shall be performed by Contractor at Contractor's own cost and expense. Fences subject to interference shall be maintained as effective barriers consistent with the original intent but, upon approval of City, they may be moved or rearranged to facilitate prosecution of the Work until the Work is finished, after which they shall be restored to their original location in an equal or better condition that existed prior to rearrangement.

#### **6.14 Preservation of Property**

Contractor shall not damage existing improvements, utility facilities, and adjacent property, real and personal. The fact that any existing underground improvement or facility is not shown on the Drawings shall not relieve Contractor of responsibility to ascertain the existence of any underground improvement or facility which may be subject to damage by reason of Contractor's operations.

Any damage to improvements or property, whether above or below the ground, private or public, within or adjacent to the project limits, arising from, or in consequence of, the performance of the Contract shall be repaired at once by Contractor. If City requires such repair to be made prior to the execution or continued performance of any part of the Work included in this Contract, City will so notify Contractor who shall delay or discontinue the performance of that part of the Work until the necessary repair has been made. Such delay shall not be considered unavoidable, and no extension of time for completion of the Contract will be allowed therefor.

When ordered by City to make any such repair, Contractor shall start work thereon within four (4) hours and shall prosecute the same with diligence to completion. Upon failure of Contractor to so comply with such order, or upon Contractor's failure to make immediate emergency repairs reasonably determined by City to be necessary in the best interests of the public, City shall have authority to cause such repair to be made and to deduct the costs thereof from any money due, or which may become due, Contractor.

In an emergency affecting the safety of life or property including adjoining property, Contractor shall act to prevent, to the extent possible, such threatened loss or injury, whether or not instructed to do so by City.

#### **6.15 Contractor's Responsibility for Work**

Until Final Acceptance of the Work, Contractor shall have the charge and care of the work and of the materials to be used therein, and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The materials to be used in the Work include both those furnished by City and those furnished by Contractor, including materials for which Contractor has received partial payment as provided in Section 8.3, Progress Payment.

#### **6.16 Indemnification and Hold Harmless**

Contractor shall, to the fullest extent allowed by law, indemnify, and when the City requests with respect to a claim provide a deposit for the defense of, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers against any and all liability, claims, stop notices, actions, causes of action or demands whatsoever from and against any of them, including any injury to or death of any person or damage to property or other liability of any nature, arising out of, pertaining to, or related to the performance of this Agreement by Contractor or Contractor's employees, officers, officials, agents or independent contractors. Contractor shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of City, its agents or employees. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in these sections from each and every subcontractor or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this agreement. If Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section.

With respect to third party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against City, and each of their officers, employees, consultants and agents, including, but not limited to, the Council, City representative.

Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.

To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party[s] indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, or completion of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, City may in its discretion back charge Contractor for its costs and damages resulting there from and withhold such sums from progress payments or other contract monies which may become due.

**6.17 Payment of Taxes**

Except as otherwise specifically provided in the Special Provisions, the Contract Prices shall include full compensation for all current and future taxes of any type which Contractor is required to pay, whether imposed by federal, state, or local government, and no tax exemption certificate or any other document designed to exempt Contractor from payment of tax will be furnished to Contractor by City.

**6.18 Cooperation with Others**

City reserves the right to do other work on or near the Project. Contractor shall cooperate with others and conduct Work so as to facilitate work by City or others and prevent delay, additional expense, or hindrance thereto. Contractor shall request from, and exchange with others, Drawings, data, and information as necessary to insure proper completion of the project and work of others. Contractor shall furnish copies of correspondence and Drawings exchanged with other contractors to City.

Contractor shall conduct, adjust, correct, and coordinate Work with work of others so that the Project shall be free of defects.

**6.19 Property Rights in Materials**

Nothing in the Contract shall be construed as vesting in Contractor any right of property in the materials used after they have been attached or affixed to the Work or the soil, or after payment has been made for 90 percent of the value of materials delivered to the Site of the work, whether or not they have been so attached or affixed. All such materials shall become the property of City upon being so attached or affixed or upon payment of such 90 percent of the value of materials delivered by Contractor on the ground and not used.

**6.20 Rights in Land and Improvements**

Nothing in these Specifications shall be construed as allowing Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between City and any owner, former owner, or tenant of such land, structure, or building.

**6.21 Title to Materials Found on the Work**

The title to all water and to the right to the use of all water, to all soil, stone, gravel, sand, minerals, and all other materials developed or obtained in the excavation or other operations by Contractor or any subcontractor, or any of their employees, and the right to use or dispose of the same, are hereby expressly reserved by City, and neither Contractor, nor any subcontractor, nor any of their employees shall have any right, title, or interest in or to any part thereof; neither shall they, nor any of them, assert or make any claim thereto. Contractor may be permitted to use in the Work, without charge, any such materials which meet the requirements of these Specifications.

## **6.22 Trespass**

Contractor shall be responsible for all damage or injury which may be caused on any property by trespass by Contractor, any subcontractor, or their employees in the course of their employment, whether the said trespass was committed with or without the consent or knowledge of Contractor.

## **6.23 Subcontracting**

The Contractor shall give personal attention to the fulfillment of the contract and shall keep the work under the Contractor's control.

No subcontractor will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the contract and specifications.

The Contractor shall perform, with the Contractor's own organization, contract work amounting to not less than the percentage listed in Document 00100 Advertisement for Bid, of the original total contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any designated "Specialty Items" performed by subcontract may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. When items of work in the Bid Form, (Document 00400) are preceded by the letters (S), those items are designated as "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the contract item bid price, determined from information submitted by the Contractor, subject to approval by the Engineer.

Subcontracts shall include provisions that the contract between the City and the Contractor is part of the subcontract, and that all terms and provisions of the contract are incorporated in the subcontract. Subcontracts shall also contain certification by the subcontractor that the subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted work. Copies of subcontracts shall be available to the Engineer upon written request, and shall be provided to the Engineer at the time any litigation against the City concerning the project is filed.

Before work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be subcontracted.

Pursuant to the provisions of Section 6109 of the Public Contract Code, the Contractor shall not perform work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the subcontractor shall be removed immediately on the requisition of the Engineer and shall not again be employed on the work.

Contractor shall comply with Subletting and Subcontracting Fair Practices Act commencing with Section 4100 of the Public Contract Code. Violations shall subject Contractor to penalties described in the Act.

In accordance with Section 4107 of the Public Contract Code, City Council or its designated authorized officer is the awarding authority for the purpose of consenting to a substitute subcontractor.

## **6.24 Tunnel Construction Safety**

Attention is directed to Labor Code Sections 7950 and following, concerning tunnel safety. Contractor shall notify the Division of Occupational Safety and Health and City before any initial construction may be started at any tunnels. A pre-job safety conference, to be arranged for by Contractor, shall be held for all underground operations. City shall be notified of the time and place of such conference. The tunnel classification prepared by the Division of Occupational Safety and Health shall be prominently posted at the Site by Contractor. City will obtain this classification prior to the request for bids, whenever possible, and make it available to Contractor.

## **6.25 Cultural Resources**

If cultural resources are encountered during construction of the Project, Contractor shall avoid any further disturbance of the materials and immediately discontinue earthwork within 100 feet of the find. Contractor shall notify City immediately upon encountering cultural resources. Contractor shall be prepared to move on to another location or phase of work, allowing sufficient time for City to evaluate the nature and significance of the find, and implement appropriate management procedures.

In the event that prehistoric human remains are encountered, ground-disturbing activities at that location shall cease immediately. Contractor shall notify City immediately upon encountering human remains. Contractor shall be prepared to move on to another location or phase of Work to allow the City to notify the proper authorities and assess management of the situation.

Contractor is advised that if burials or archaeological artifacts are encountered, it may be necessary to suspend Work on the project in order to comply with the above requirements. Payment for a delay of more than 1 working day for each occurrence will be made in accordance with Section 3.

## **6.26 Sound Control**

Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without the muffler.

Grading, construction and demolition activities shall be allowed to exceed the noise limits of Section 10.48.040 of the Cupertino Municipal Code during the daytime hours; provided that the equipment utilized has high quality noise muffler and abatement devices installed and in good condition and the activity meets one of the following criteria:

- A No individual device produces a noise level more than 87 dBA at a distance of twenty-five feet (25') (7.5 meters).
- B A noise level on any nearby property does not exceed 80 dBA. It is a violation of the Cupertino Municipal Code to engage in any grading, street construction or underground utility work within seven hundred fifty feet (750') of a residential area on Saturdays, Sundays, holidays, and during the nighttime period except as provided in Section 10.48.030 of the Cupertino Municipal Code.
- C Grading, construction, or demolition occurring during nighttime period shall not be allowed unless they meet the nighttime standards of Section 10.48.040 of the Cupertino Municipal Code.

## **6.27 Site Security**

Contractor shall take and be fully responsible for all reasonably required measures to protect and maintain the security of persons, existing facilities and property at the Site, including without limitation preventing theft, loss, vandalism and improper concealment of personal property of the City and all persons lawfully present on the Site, and including times where workers are not present on the Site. Contractor's measures shall include, at a minimum, maintaining a log of all persons entering and leaving the Site and who they represent, what they are delivering and to whom.

Contractor shall repair all damage to City's property resulting from Contractor's failure to provide adequate security measures at no cost to City.

Contractor shall maintain a lock on the Construction access gate at all times.

Contractor shall supply additional security fencing, barricades, lighting, and other security measures as required to protect and control the Site.

Contractor shall provide a Safety Program in accordance with all applicable federal, state, and local regulation codes, rules, laws and ordinances.



## **6.28 Public Facilities**

Where overhead service to a structure, known to receive service, does not exist, then underground service shall be assumed to exist.

Contractor's attention is directed to the existence of underground sewer, water, gas, power, telephone and cable and other utilities within the areas in which Work is to be performed. Contractor shall, at least 2 Business Days, or as otherwise noted, prior to commencement of excavation, notify the following owners of these Underground

Facilities:

**A. Storm drainage lines:**

City of Cupertino

**B. Water:**

San Jose Water Co., 374 West Santa Clara, San Jose, CA 95113-9971, Phone: 408-279-7900

**C. Cable:**

Comcast, 1900 S. Tenth St., San Jose, CA 95112, Phone: 408-918-3230

**D. Electrical/Gas:**

Pacific Gas & Electric, 10900 N. Blaney Ave., Cupertino, CA 95014, Phone: 408-725-2098

**E. Phone:**

Pacific Bell/AT&T, 3475 B N. First Street, San Jose, CA 95134, Phone: 408-493-7236

**F. Sanitary:**

Cupertino Sanitary, 20833 Stevens Creek Blvd., Suite 104, Cupertino, CA 95014, Phone: 408-259-7071

The Contractor shall have all of the utilities, underground mains, and services that may conflict with the project, located in the field. The Contractor shall contact Underground Service Alert (USA) two (2) working days in advance of any work, for location of the underground facilities, at 800-642-2444.

Underground vaults and lines are shown on the Drawings. Contractor shall exhibit extreme care when conducting this work and may be required to hand dig in these locations. The vaults and lines shall be protected throughout the construction period.

Attention is directed to the presence of overhead telephone, cable and power lines and a power pole in the area. The existing power pole shall be protected throughout the construction period. Protection of these power poles may require assistance from PG&E, AT&T and Comcast. Cost for assistance by PG&E, AT&T and Comcast shall be borne by Contractor.

Attention is directed to the existing utilities in the area. Contractor shall notify utility companies prior to digging in this area and shall abide by any provisions instructed by the utility company for protection of their facility including hand digging in this area. Costs for compliance with all mitigation measures shall be borne by Contractor.

## **6.29 Legal Actions Against the City**

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

## **6.30 Limit of Liability**

CITY, AND EACH OF ITS OFFICERS, THE CITY COUNCIL, EMPLOYEES, CONSULTANTS (INCLUDING WITHOUT LIMITATION CONSULTING ENGINEER) AND AGENTS INCLUDING, BUT NOT LIMITED TO, ENGINEER EACH OTHER CITY REPRESENTATIVE SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO

THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

## **SECTION 7. PROSECUTION AND PROGRESS OF WORK**

### **7.1 Assignment**

The performance of the Contract may not be assigned except upon the written consent of the Council. Consent will not be given to any proposed assignment which would relieve the original Contractor or surety of their responsibilities under the Contract.

Contractor may assign moneys due, or to become due under the Contract, and such assignment will be recognized by City, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper setoffs in favor of City and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject to being used by City for the completion of the Work in the event that Contractor should be in default therein.

### **7.2 Notice to Proceed**

The Contract Time will commence to run on the date indicated on the Notice to Proceed. Contractor shall not do any work at the site prior to the date on which the Contract Time commences to run.

### **7.3 Commencement of Work**

Contractor shall not begin Work until receipt from City of the Notice to Proceed, and shall, upon receiving notice, begin Work within the time specified in the notice. The time specified in said notice will allow a period of at least 10 days after the date of said notice for commencement of Work. After receipt of said notice, Contractor shall diligently prosecute the Work to completion. Contractor shall provide, at least 24 hours in advance, written notice to City of Contractor's intention to start Work and specify the date on which Contractor intends to start.

No Work shall begin until the Contract and certificates of insurance required by Section 2 have been received and approved.

### **7.4 Work Progress Schedule – Not Applicable**

#### **A. General**

Progress Schedule shall be based on and incorporate milestone and completion dates specified in Contract Documents. Overall time of completion and time of completion for each milestone shown on Progress Schedule shall adhere to times in Document 00520 (Contract), unless an earlier (advanced) time of completion is requested by Contractor and agreed to by City. A Change Order shall formalize any such agreement.

1. City is not required to accept an earlier (advanced) schedule, i.e., one that shows early completion date(s) for the Contract Time.
2. Contractor is not entitled to extra compensation in event agreement is reached on an earlier (advanced) schedule and Contractor completes its Work, for whatever reason, beyond completion date shown in earlier (advanced) schedule but within the Contract Time.
3. A schedule showing the Work completed in less than the Contract Time, which has been accepted by City, shall be considered to have Project Float. The Project Float is the time between the scheduled completion of the Work and Contract Substantial Completion. Project Float is a resource available to both City and Contractor.
4. Float Ownership: Neither City nor Contractor owns float. The Project owns the float. As such, liability for delay of any Substantial Completion or Final Completion date rests with the party whose actions, last in time, actually cause delay to a Substantial Completion or Final Completion date.
  - a. For example, in the event of unexcused delay by Party A and Party B, and if Party A uses some, but not all of the float and Party B later uses remainder of the float as well as additional time beyond the float, Party B shall be liable for the time that represents a delay to the Substantial Completion date.
  - b. Under this scenario, Party A would not be responsible for the time since it did not consume all of the float and additional float remained; therefore, the Substantial Completion Date was unaffected.

- c Progress Schedule shall be the basis for evaluating job progress, payment requests, and time extension requests. Responsibility for developing Contract schedule and monitoring actual progress as compared to Progress Schedule rests with Contractor.
- d Failure of Progress Schedule to include any element of the Work or any inaccuracy in Progress Schedule will not relieve Contractor from responsibility for accomplishing the Work in accordance with the Contract. City's acceptance of Schedule shall be for its use in monitoring and evaluating job progress, payment requests, and time extension requests, and shall not, in any manner, impose a duty of care upon City, or act to relieve Contractor of its responsibility for means and methods of construction.
- e Transmit each item under form approved by City.
  - Identify Project with the City Project number, and name of Contractor.
  - Provide space for Contractor's approval stamp and City's review stamps.
  - Submittals received from sources other than Contractor will be returned to Contractor without City's review.

**B. Initial and Original Progress Schedule**

Initial Schedule submitted for review at the Preconstruction Conference shall serve as Contractor's schedule for up to 30 Days after the Notice to Proceed.

Initial Schedule must indicate detailed plan for the Work to be completed in first 30 Days of the Contract; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of materials and equipment. Show Work beyond 30 Days in summary form.

Contractor shall submit its Original Schedule for review no later than first progress payment. Original Schedule and all updates shall comply with all standards herein.

All Schedules shall be time-scaled.

All Schedules shall be cost- and resource-loaded. Accepted cost- and resource-loaded Schedule will be used as basis for monthly progress payments. Use of Initial Schedule for progress payments shall not exceed 30 Days.

Except as otherwise expressly provided in this Document, meet with City to review and discuss the each Schedule (i.e., Initial, Original and monthly updates) within seven Days after each Schedule has been submitted to City.

City's review and comment on any Schedule shall be limited to Contract conformance (with sequencing, coordination, and milestone requirements).

Contractor shall make corrections to Schedule necessary to comply with Contract requirements and shall adjust Schedule to incorporate any missing information requested by City. Resubmit Initial Schedule if requested by City.

If Contractor is of the opinion that any of the Work included on its Schedule has been impacted, submit to City a written Time Impact Evaluation (TIE) in accordance with this Section. The TIE shall be based on the most current update of the Initial Schedule.

**C. Schedule Format and Level of Detail**

Each Schedule (Initial, Original and updates) shall indicate all separate fabrication, procurement and field construction activities required for completion of the Work, including but not limited to the following:

1. All Contractor, Subcontractor, and assigned Contractor work shall be shown in a logical work sequence that demonstrates a coordinated plan of work for all contractors. The intent is to provide a common basis of acceptance, understanding, and communication, as well as interface with other contractors.
2. Activities related to the delivery of Contractor and City-furnished equipment to be Contractor-installed per Contract shall be shown.
3. All activities shall be identified through codes or other identification to indicate the building (i.e. buildings, Site work) and Contractor/Subcontractor responsibility to which they pertain.
4. Break up the Work schedule into activities of durations of approximately 21 Days or less each, except for non-field construction activities or as otherwise deemed acceptable by City.
5. Show the critical path in red. For each activity, show early start, late start, early finish, late finish, durations measured in Days, float, resources, predecessor and successor activities, planned workday/week for the activity, man power loading, and scheduled/actual progress payments.

Seasonal weather conditions (which do not constitute a delay as defined herein) shall be considered in the planning and scheduling of all work influenced by high or low ambient temperatures or presence of high moisture for the completion of the Work within the allotted Contract Time.

Failure by Contractor to include any element of Work required for performance of the Work on the detailed construction schedule shall not excuse Contractor from completing all Work required within the Contract Time.

A two-week "look ahead," detailed daily bar chart schedule shall be updated and issued weekly. Utilize computer-scheduling software, such as Microsoft Project software or approved equivalent, for all scheduling including schedule updates.

**D. Monthly Schedule Update Submittals**

Following acceptance of Contractor's Initial Schedule, monitor progress of Work and adjust Schedule each month to reflect actual progress and any anticipated changes to planned activities.

Each Schedule update submitted shall be complete, including all information requested for the Initial Schedule and Original Schedule submittal.

Each update shall continue to show all Work activities including those already completed. These completed activities shall accurately reflect "as built" information by indicating when activities were actually started and completed, and Contractor warrants the accuracy of as-built information as shown.

Within five Days after monthly Schedule update, submit the updated Schedule.

Within five Days of receipt of above-noted revised submittals, City will either accept or reject monthly schedule update submittal.

1. If accepted, percent complete shown in monthly update will be basis for Application for Payment by Contractor. The schedule update shall be submitted as part of Contractor's Application for Payment.
2. If rejected, update shall be corrected and resubmitted by Contractor before the Application for Payment is submitted.

Updating, changing or revising of any report, curve, schedule or narrative submitted to City by Contractor under this Contract, nor City's review or acceptance of any such report, curve, schedule or

narrative shall not have the effect of amending or modifying, in any way, the Contract Substantial Completion date or milestone dates or of modifying or limiting, in any way, Contractor's obligations under this Contract.

**E. Schedule Revisions**

Updating the Schedule (Initial and Original) to reflect actual progress shall not be considered revisions to the Schedule. Since scheduling is a dynamic process, however, revisions to activity durations and sequences are expected on a monthly basis.

To reflect revisions to the Schedule, provide City with a written narrative with a full description and reasons for each Work activity revised. For revisions affecting the sequence of Work, provide a schedule diagram that compares the original sequence to the revised sequence of Work. Provide the written narrative and schedule diagram for revisions three Days in advance of the monthly schedule update. Clearly show and discuss any changes in the critical path.

Schedule revisions shall not be incorporated into any schedule update until City has reviewed the revisions. City may request further information and justification for schedule revisions and, within three Days, provide City with a complete written narrative response to City's request.

If City does not accept Contractor's revision, and Contractor disagrees with City's position, Contractor has seven Days from receipt of City's letter rejecting the revision, to provide a written narrative providing full justification and explanation for the revision. Contractor's failure to respond in writing within seven Days of City's written rejection of a schedule revision shall be contractually interpreted as acceptance of City's position, and Contractor waives its rights to subsequently dispute or file a claim regarding City's position. If Contractor files a timely response as provided in this paragraph, and the parties are still unable to agree, Contractor's sole right shall be to file a claim as provided in this Document.

At City's discretion, Contractor can be required to provide Subcontractor certifications of performance regarding proposed schedule revisions affecting said Subcontractors.

**F. Recovery Schedule**

If a Schedule update shows a substantial completion date 21 Days beyond any Contract Substantial Completion date, or individual Milestone completion dates, submit to City within seven Days the proposed revisions to recover the lost time. As part of this submittal, provide a written narrative for each revision made to recapture the lost time. If the revisions include sequence changes, provide a schedule diagram comparing the original sequence to the revised sequence of Work. If City requests, show the intended critical path; secure appropriate Subcontractor and supplier consent to the recovery Schedule; submit a narrative explaining trade flow and construction flow changes, duration changes, added/deleted activities, critical path changes and identify all near critical paths and man hour loading assumptions for major Subcontractors.

The revisions shall not be incorporated into any Schedule update until City has reviewed the revisions. If City does not accept Contractor's revisions, City and Contractor shall follow the procedures in paragraphs above.

At City's discretion, Contractor can be required to provide Subcontractor certifications for revisions affecting said Subcontractors.

**G. Time Impact Evaluation (TIE) For Change Orders and Other Delays**

When Contractor is directed to proceed with changed work, prepare and submit, within 14 Days from the direction to proceed, a TIE that includes both a written narrative and a schedule diagram depicting how the changed work affects other schedule activities. The schedule diagram shall show how Contractor proposes to incorporate the changed work in the schedule, and how it impacts the current Schedule update critical path or otherwise. Contractor is also responsible for requesting time extensions based on the TIE's impact on the critical path. The diagram shall be tied to the main sequence of scheduled activities to enable City to evaluate the impact of changed work to the scheduled critical path.

Comply with the requirements of this Section for all types of delays such as, but not limited to, Contractor/Subcontractor delays, adverse weather delays, strikes, procurement delays, fabrication delays, etc.

Contractor is responsible for all costs associated with the preparation of TIEs, and the process of incorporating TIEs into the current schedule update. Provide City with four copies of each TIE.

Once agreement has been reached on a TIE, the Contract Time will be adjusted accordingly. If agreement is not reached on a TIE, the Contract Time may be extended in an amount City allows, and Contractor may submit a claim for additional time claimed by Contractor as provided in this Document.

#### **H. Time Extensions**

Contractor is responsible for requesting time extensions for time impacts that, in the opinion of Contractor, impact the critical path of the current schedule update. Notice of time impacts shall be given in accordance with this Document

Where an event for which City is responsible impacts the projected Substantial Completion date, provide a written mitigation plan, including a schedule diagram, which explains how (e.g., increase crew size, overtime, etc.) the impact can be mitigated. Also include a detailed cost breakdown of the labor, equipment, and material Contractor would expend to mitigate City-caused time impact. Submit mitigation plan to City within 14 Days from the date of discovery of said impact. Contractor is responsible for the cost to prepare the mitigation plan.

Failure to request time, provide TIE, or provide the required mitigation plan will result in Contractor waiving its right to a time extension and cost to mitigate the delay.

No time will be granted under the Contract Documents for cumulative effect of changes. City will not be obligated to consider any time extension request unless requirements of Contract Documents are complied with.

Failure of Contractor to perform in accordance with the current schedule update shall not be excused by submittal of time extension requests.

Notwithstanding any other provision of this Section, if Contractor does not submit a TIE within the required 14 Days for any issue, Contractor hereby agrees that Contractor does not require a time extension for that issue.

#### **I. Project Status Reporting**

In addition to submittal requirements for scheduling identified in this Section, provide a monthly project status report (i.e., written narrative report) to be submitted in conjunction with each Schedule as specified herein. Status reporting shall be in form specified in this paragraph below.

Prepare monthly written narrative reports of status of Project for submission to City. Written status reports shall include:

1. Status of major Project components (percent complete, amount of time ahead or behind schedule) and an explanation of how Project will be brought back on schedule if delays have occurred.
2. Progress made on critical activities indicated on each Schedule, including inspections.
3. Explanations for any lack of work on critical path activities planned to be performed during last month.
4. Explanations for any schedule changes, including changes to logic or to activity durations.
5. List of critical activities scheduled to be performed during the next month.

6. Status of major material and equipment procurement.
7. Any delays encountered during reporting period.
8. Provide printed report indicating actual versus planned resource (labor, materials and equipment) loading for each trade and each activity. This report shall be provided on weekly and monthly basis.
  - a. Actual resource shall be accumulated in field by Contractor, and shall be as noted on Contractor's daily reports. These reports will be basis for information provided in monthly and weekly printed reports.
  - b. Explain all variances and mitigation measures.
9. Contractor may include any other information pertinent to status of Project. Include additional status information requested by City at no additional cost.
10. Status reports, and the information contained therein, shall not be construed as claims, notice of claims, notice of delay, or requests for changes or compensation.

At the close of each workday provide City with report of Contractor and its Subcontractors' work activities for that day, including trades, equipment, work activities worked on, staff levels, and equipment deliveries.

#### **7.5 Temporary Suspension of Work**

By written order to Contractor, City may suspend the Work wholly or in part for an indefinite period, or for such period as City may deem necessary, for any of the following reasons:

- Weather conditions or other conditions which are unfavorable for the proper prosecution of the Work;
- Failure of Contractor to carry out orders given or to perform any provisions of the Contract; or
- The convenience and benefit of City.

Such suspension shall be effective upon receipt by Contractor of the written order suspending the Work and shall be terminated upon receipt by Contractor of the written order terminating the suspension.

If, under authority of Convenience and benefit of City, as stated above, City orders a suspension of all or a portion of the Work, which is the current controlling operation, it will be cause for a time extension if it affects the controlling item of Work.

#### **7.6 Liquidated Damages – Not Applicable**

In case all the Work called for under the Contract in all parts and requirements is not finished or completed within the number of days as set forth in Document 00520 (Contract), it is agreed that damage will be sustained by City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which City will sustain in the event of and by reason of such delay; and it is, therefore, agreed that Contractor will pay to City the sum set forth in Document 00520 (Contract) per day for each and every day's delay in finishing the Work in excess of the number of days prescribed; and Contractor agrees to pay said liquidated damages herein provided for, and further agrees that City may deduct the amount thereof from any moneys due, or that may become due, to Contractor under the Contract.

#### **7.7 Termination of Control**

Failure to supply an adequate working force or material of proper quality, or in any other respect to prosecute the Work with the diligence and force specified by the Contract, is grounds for termination of Contractor's control over the Work and for taking over the Work by City.

#### **7.8 Termination of Contract for Cause**

Contractor shall be in default of the Contract Documents and City may terminate Contractor's right to proceed under the Contract Documents, for cause, should Contractor commit a material breach of the Contract Documents and not cure such breach within ten (10) calendar days of the date of notice from City to Contractor demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Contractor to avail itself of a time period in excess of 10 calendar days, Contractor must provide City within the ten (10) day period with a

written plan acceptable to City to cure said breach, and then diligently commence and continue such cure according to the written plan).

In the event of termination by City as provided above for cause, Contractor shall deliver to City possession of the Work in its then condition, including but not limited to, all designs, engineering, Project records, cost data of all types, plans and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right which City may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, Contractor shall compensate City for all loss, cost, damage, expense, and/or liability suffered by City as a result of such termination and failure to comply with the Contract Documents.

In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with Section 9 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Contractor.

## **7.9 Termination of Contract for Convenience**

- A. City may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever City shall determine that termination is in City's best interest. Termination shall be effected by City delivering to Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
- B. After receiving a notice of termination, and except as otherwise directed by City, Contractor shall:
  - 1. Stop Work under the Contract Documents on date and to extent specified in notice of termination;
  - 2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
  - 3. Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
  - 4. Assign to City in manner, at times, and to extent directed by City, all right, title, and interest of Contractor under orders and subcontracts so terminated. City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
  - 5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of City to extent City may require. City's approval or ratification shall be final for purposes of this section;
  - 6. Transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, all fabricated or un-fabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to City;
  - 7. Use its best efforts to sell, in manner, at times, to extent, and at price or prices that City directs or authorizes, any property of types referred to in preceding paragraph, but Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by City. Proceeds of transfer or disposition shall be applied to reduce payments to be made by City to Contractor under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as City may direct;
  - 8. Complete performance of the part of the Work which was not terminated by the notice of termination; and



9. Take such action as may be necessary, or as City may direct, to protect and preserve all property related to Contract Documents which is in Contractor's possession and in which City has or may acquire interest.
- C. After receipt of a notice of termination, Contractor shall submit to City its termination claim, in form and with all certifications required by Section 9. Contractor's termination claim shall be submitted promptly, but in no event later than 6 months from effective date of the termination. Contractor and City may agree upon the whole or part of the amount or amounts to be paid to Contractor because of a total or partial termination of Work under this Section. If Contractor and City fail to agree on the whole amount to be paid to Contractor because of the termination of the Work under this Section, City's total liability to Contractor by reason of the termination shall be the total (without duplication of any items) of:
1. The reasonable cost to Contractor, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of ten percent of direct costs of such Work. When, in City's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.
  2. A reasonable allowance for profit on cost of Work performed as determined in the preceding paragraph, provided that Contractor establishes to City's satisfaction that Contractor would have made a profit had the Project been completed, and provided further that the profit allowed shall not exceed 5 percent of cost.
  3. Reasonable costs to Contractor of handling material returned to vendors, delivered to City or otherwise disposed of as directed by City.
  4. A reasonable allowance for Contractor's internal administrative costs in preparing termination claim.
  5. Except as provided in this Section, City shall not be liable for costs incurred by Contractor or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Contractor's Bid, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.
  6. City shall have no obligation to pay Contractor under this Section unless and until Contractor provides City with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.
- D. In arriving at the amount due Contractor under this clause, there shall be deducted in whole (or in the appropriate part[s] if the termination is partial):
1. All unliquidated advances or other payments on account previously made to Contractor, including without limitation all payments applicable to the terminated portion of Contract Documents;
  2. Any claim which City may have against Contractor in connection with Contract Documents; and
  3. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold under provisions of this Section, and not otherwise recovered by or credited to City.

#### **7.10 Contractor's Cost Data**

Contractor shall maintain cost accounting records for the contract pertaining to, and in such a manner as to provide a clear distinction between, the following six categories of costs of work during the life of the contract:

- A. Direct costs of contract item work.
- B. Direct costs of changes in character in conformance with Section 3.3, Change in Work.
- C. Direct costs of extra work in conformance with Section 3.3, Change in Work.
- D. Direct costs of work not required by the contract and performed for others.
- E. Direct costs of work performed under a notice of potential claim in conformance with the provisions in Section 9.
- F. Indirect costs of overhead.

See also section 3.4, Change in Contract Price, regarding cost accounting records for daily extra work.

City shall have the right to inspect, audit, and copy Contractor's books and records related to the Project wherever located, and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. Contractor shall maintain in good order and City shall have the right to inspect and obtain copies of the following documents at all times: all Contract Documents, all planning and design documents, all Bid Documents, all design modification proposals, all value engineering or other cost reduction proposals, all revisions made to the original design, and all job progress reports and photographs, and as-built drawings maintained by Contractor.

City or any of its duly authorized representatives shall, from start of work until the expiration of 4 years after filing the Notice of Completion and Acceptance under this Contract or any subcontract under it, have access to and the right to examine any of Contractor's or subcontractor's payrolls, records of personnel, invoices of materials, records of plant and equipment costs, and any and all other directly pertinent books, documents, papers, and records of such Contractor or subcontractors, involving transactions related to said Contract or subcontracts. In the event State or Federal funds are involved in the financing of the project, the State or Federal Government shall have the same rights of inspection as City.

The cost accounting records for this Contract shall be maintained separately from other contracts during the life of this Contract, and for a period of not less than 3 years after the date of acceptance of the Work. If Contractor intends to file claims against City, Contractor shall keep all required cost accounting records until complete resolution of all claims has been reached.

#### **7.11 Coordination with Utilities**

In general, the location of existing utility facilities as shown on the Drawings is approximate. This information has been obtained from utility maps furnished by the various agencies involved, and City does not guarantee either the correctness of locations or the extent of such locations.

Service laterals, such as house sanitary, water, electrical, gas, cable TV, storm or telephone cables, or appurtenances, may not all be shown on the Drawings. City may not indicate the presence of service laterals or appurtenances whenever the presence of such utilities can be inferred from the presence of other visible facilities, such as buildings, meter boxes or junction boxes, on or adjacent to the construction Site. No changes in the Contract Price or Contract time will be made due to the presence of unidentified or incorrectly located service laterals or appurtenances. It shall be the responsibility of Contractor to ascertain the exact location of the utility facilities.

Unless otherwise indicated on the Drawings or specified in the Specifications, Contractor shall maintain in service all utilities including house services, power, lighting, and telephone conduits, and any other surface or subsurface structure or facility of any nature that may be affected by the Work; provided, however, that Contractor, for convenience, may arrange with the owner to temporarily disconnect house service lines or other facilities along the line of the work. The cost of disconnecting and restoring such utilities shall be borne by Contractor.

In the event that a main or trunk line utility facility is encountered which interferes with the Work and is neither shown on the Drawings nor specified in the Specifications, Contractor shall immediately notify City in writing. City will either have the appropriate utility company or public agency relocate the facility, or City will direct Contractor to relocate the facility in accordance with Section 3.3, Change in Work.

In the event that a main or trunk line utility facility is encountered which interferes with the Work and which Contractor believes is not shown on the Drawings or indicated in the Specifications with reasonable accuracy, Contractor shall immediately notify City in writing. Reasonable accuracy is defined as being within the tolerances noted on the Drawings. If City determines that the main or trunk line utility facility was shown on the Drawings or indicated in the Specifications with reasonable accuracy, Contractor shall be solely responsible for relocation or removal, and no additional time will be granted nor will additional compensation be made for any additional work required. If City determines that the main or trunk line utility facility was not shown on the Drawings or indicated in the Specifications with reasonable accuracy, City will either have the appropriate utility company or public agency relocate the facility, or City will direct Contractor to relocate the facility in accordance with Section 3.3, Change in Work.

When a delay in the completion of the project is caused by the failure of City or the owner of a utility facility to provide for removal or relocation of existing main or trunk line utility facilities which are not shown on the Drawings or indicated in the Specifications, or which are not shown on the Drawings or indicated in the Specifications with reasonable accuracy, the Contract time will be extended in accordance with Section 3.5, Change of Contract Time.

## **7.12 Temporary Facilities – Not Applicable**

### **A. Temporary Electricity**

Contractor shall provide, maintain, and pay for electrical power at the Site for construction purposes and for Contractor's and Construction Manager's trailers. Contractor must provide all necessary wiring and appurtenances for connection to City's system.

### **B. Temporary Communications**

Provide, maintain, and pay for all applicable communications and data services, without limitation, to Contractor's field office commencing at time of Project mobilization, including all installation and connection charges.

### **C. Temporary Water**

1. Provide, maintain, and pay for suitable quality water service required for construction operations.
2. All water required for and in connection with the Work, including without limitation for dust control, shall be furnished by and at the expense of Contractor. Contractor will be responsible for all costs/fees associated with water usage. Contractor shall furnish necessary pipe, hose, nozzles, meter, and tools and perform all necessary labor. Unnecessary waste of water will not be permitted. Special hydrant wrenches shall be used for opening and closing fire hydrants; in no case shall pipe wrenches be used for this purpose. Contractor to coordinate services with the appropriate Water Company.

### **D. Fence**

1. All existing fences affected by the Work shall be maintained by Contractor until Final Completion. Fences which interfere with construction operations shall not be relocated or dismantled until City gives written permission to do so, and the period the fence may be left relocated or dismantled has been agreed upon. Where fences must be maintained across the construction easement, adequate gates shall be installed. Gates shall be kept closed and locked at all times when not in use.
2. On completion of the Work across any tract of land, Contractor shall restore all fences to their original or to a better condition and to their original locations. Contractor will be responsible for all costs associated with the relocating of the fence as required for new installation of work.

### **E. Temporary Sanitary Facilities**

1. Provide and maintain required temporary buildings with sanitary toilets for use of all workers. At a minimum, sanitary facilities shall be located at trailer site, staging area, and adjacent to

work area and as far away from adjacent residences as possible. Location must be approved by City prior to placement.

2. Sanitary facilities shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. If toilets of the chemically treated type are used, at least one toilet will be furnished for each 20 persons. Contractor shall enforce the use of such sanitary facilities by all personnel at the Site.
3. Comply with all minimum requirements of the Health Department or other public agency having jurisdiction; maintain in a sanitary condition at all times.

### **7.13 Project Record Documents – Not Applicable**

#### **A. Project Record Drawings**

1. During the construction period, maintain a set of prints of Contract Drawings and Shop Drawings for Project Record Documents purposes. Label each document (on first sheet or page) "PROJECT RECORD" in 2-inch high printed letters. Keep record documents current. Note: A reference by number to a Change Order, CCD, RFI, RFQ, RFP, Field Order or other such document is not acceptable as sufficient record information on any record document. Do not permanently conceal any Work until required information has been recorded
2. Mark the PROJECT RECORD drawings to indicate the actual installation where the installation varies appreciably from the installation shown originally. Give particular attention to information on concealed elements that would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
  - Dimensional changes to the Drawings
  - Revisions to details shown on the Drawings
  - Depths of various elements of foundation level or survey datum
  - Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements
  - Location of internal utilities and appurtenances concealed in construction referenced to visible and accessible features of structure
  - Locations of underground work, points of connection with existing utilities, changes in direction, valves, manholes, catch basins, capped stub outs, invert elevations, and similar items
  - Actual numbering of each electrical circuit
  - Field changes of dimension and detail
  - Revisions to routing of piping and conduits
  - Revisions to electrical circuitry
  - Actual equipment locations
  - Duct size and routing
  - Changes made by Change Order or CCD
  - Details not on original Contract Drawings
  - Mark completely and accurately Project Record Drawing prints of Contract Drawings or Shop Drawings, whichever is the most capable of showing actual physical conditions. Where Shop Drawings are marked, show cross-reference on Contract Drawings location.
  - Mark Project Record Drawing sets with red, erasable colored pencil; use other colors to distinguish between changes for different categories of the Work at the same location.
  - Mark important additional information that was either shown schematically or omitted from original Drawings.
  - Note CCD numbers; alternate numbers, Change Order numbers, and similar identification.

- Responsibility for Mark-up: Where feasible, the individual or entity who obtained Project Record Drawing data, whether the individual or entity is the installer, Subcontractor, or similar entity, is required to prepare the mark-up on Project Record Drawings.
  - (a) Accurately record information in an understandable and legible drawing technique.
  - (b) Record data as soon as possible after it has been obtained. In the case of concealed installations, record and check the mark-up prior to concealment.
- 3. Preparation of Record Drawings: Immediately prior to inspection for Certification of Substantial Completion, review completed marked-up Project Record Drawings with City. When authorized, prepare a full set of correct transparencies of Contract Drawings and Shop Drawings.
  - a. Incorporate changes and additional information previously marked on print sets. Erase, redraw, and add details and notations where applicable. Identify and date each Drawing; include the printed designation "PROJECT RECORD DRAWING" in a prominent location on each Drawing.
  - b. Refer instances of uncertainty to City for resolution.
  - c. Distribution: Whether or not changes and additional information were recorded, organize and bind original marked-up set of prints that were maintained during the construction period into manageable sets. Bind the set with durable paper cover sheets, with appropriate identification, including titles, dates, and other information on cover sheets.
- 4. Distribution of Marked-Up Drawings: Submit the marked-up Project Record Drawings set to City for City's records.
- 5. Shop Drawings and Samples: Maintain as record documents; legibly annotate Shop Drawings and Samples to record changes made after review.

**B. Project Record Specifications**

During the construction period, maintain one copy of the Project Specifications, including addenda and modifications issued, for Project Record Documents purposes.

Mark the Project Record Specifications to indicate the actual installation where the installation varies substantially from that indicated in Specifications and Modifications issued. Note related Project Record Drawing information, where applicable. Give particular attention to substitutions, selection of product options, Change Order and Construction Change Directive work, and information on concealed installation that would be difficult to identify or measure and record later.

1. In each Specification Section where products, materials or units of equipment are specified or scheduled, mark the copy with the proprietary name and model number of the product furnished.
2. Record the name of the manufacturer, catalog number, supplier and installer, and other information necessary to provide a record of selections made and to document coordination with Project Record Product Data submittals and maintenance manuals.
3. Note related Project Record Product Data, where applicable, for each principal product specified, indicate whether Project Record Product Data has been submitted in maintenance manual instead of submitted as Project Record Product Data.
4. Upon completion of mark-up, submit Project Record Specifications to City for City's records.

**C. Additional Requirements for Final Project Record Documents**

1. Prior to Substantial Completion of the Work, City will make available to Contractor originals of the Drawings and Specifications, as current Microsoft® Word for Windows, and current AutoCAD Land Development Desktop for Windows in drawing format (.DWG) files. Note all changes thereon for the final Project Record Documents and provide one set of mylar reproduces, one set of revised Specifications and one set of disks or CDs to be submitted to City.

2. After Substantial Completion and before Final Completion, carefully transfer all data shown on the job set of Record Drawings to the corresponding computer files, coordinating the information as required.  
Clearly indicate at each affected detail and other drawings a full description of changes made during construction, and the actual location of items as previously specified.  
"Cloud" all affected areas.  
Stamp each Record Drawing with the following information:
  - a. Project Record Document.
  - b. Prepared by: Contractor's name, permanent address.
  - c. Date prepared.
  - d. Contractor's signature.
  - e. City Project Number.

**D. Project Record Product Data**

1. During the construction period, maintain one copy of each Project Record Product Data submittal for Project Record Document purposes.
  - a. Mark Project Record Product Data to indicate the actual product installation where the installation varies substantially from that indicated in Project Record Product Data submitted. Include significant changes in the product delivered to the Site, and changes in manufacturer's instructions and recommendations for installation.
  - b. Give particular attention to information on concealed products and installations that cannot be readily identified and recorded later.
  - c. Note related Change Orders and mark-up of Project Record Drawings, where applicable.
  - d. Upon completion of mark-up, submit a complete set of Project Record Product Data to City for City's records.
  - e. Where Project Record Product Data is required as part of maintenance manuals, submit marked-up Project Record Product Data as an insert in the manual, instead of submittal as Project Record Product Data.
  - f. Contractor is responsible for mark-up and submittal of Project Record Product Data for its own Work.
2. Material, Equipment, and Finish Data:
  - a. Provide data for primary materials, equipment and finishes as required under each Specification Section.
  - b. Submit two sets prior to final inspection, bound in 8-1/2 inches by 11 inches three-ring binders with durable plastic covers; provide typewritten table of contents for each volume.
  - c. Arrange by Specification Section number and give names, addresses, and telephone numbers of Subcontractors and suppliers. List:
    - Trade names.
    - Model or type numbers.
    - Assembly diagrams.
    - Operating instructions.
    - Cleaning instructions.
    - Maintenance instructions.
    - Recommended spare parts.
    - Product data.

**E. Miscellaneous Project Record Submittals**

Refer to other Specification Sections for miscellaneous record keeping requirements and submittals in connection with various construction activities. Immediately prior to Substantial Completion, complete miscellaneous records and place in good order, properly identified and bound or filed, ready for use and reference. Submit to the City for City's records. Categories of requirements resulting in miscellaneous records include, but are not limited to, the following:

- Field records on excavations and foundations
- Field records on underground construction and similar work

- Survey showing locations and elevations of underground lines
- Invert elevations of drainage piping
- Surveys establishing lines and levels
- Authorized measurements utilizing unit prices or allowances
- Records of plant treatment
- Ambient and substrate condition tests
- Certifications received in lieu of labels on bulk products
- Batch mixing and bulk delivery records
- Testing and qualification of tradespersons
- Documented qualification of installation firms
- Load and performance testing
- Inspections and certifications by governing authorities
- Leakage and water-penetration tests
- Fire resistance and flame spread test results
- Final inspection and correction procedures

**F. Recording**

Post changes and modifications to the Contract Documents as they occur. Do not wait until the end of the Project. City may periodically review Project Record Documents to assure compliance with this requirement.

**G. Submittal**

1. At completion of Project, deliver Project Record Documents to City.
2. Accompany submittal with transmittal letter containing:
  - a. Date
  - b. Project title and number
  - c. Contractor's name and address
  - d. Number and title of each Project Record Document
  - e. Certification that each document as submitted is complete and accurate, and signature of Contractor or Contractor's authorized representative.

**7.14 Preconstruction Conference**

City will call for and administer Preconstruction Conference at time and place to be announced (usually the week prior to start of Work at the Site).

Contractor, all major Subcontractors, and major suppliers shall attend Preconstruction Conference.

Agenda may include, but not be limited to, the following items.

- Schedules
- Personnel and vehicle permit procedures
- Use of premises
- Location of the Contractor's on-Site facilities
- Security
- Housekeeping
- Inspection and testing procedures, on-Site and off-Site
- Utility shutdown procedures
- Injury and Illness Prevention Program

#### **7.15 Weekly Progress Meeting – Not Applicable**

City will schedule and administer weekly progress meetings throughout duration of Work. Progress meetings will be held weekly unless otherwise directed by City.

Meetings shall be held at Contractor's on-Site office unless otherwise directed by City.

An City representative will prepare agenda and distribute it 4 Days in advance of meeting to Contractor.

City will record. Within 3 Days after meeting, City will distribute minutes to Contractor, who will distribute to those affected by decisions made at meeting. Attendees can either submit comments or additions to minutes prior to the next progress meeting, or may attend the next progress meeting and submit comments or additions there. Minutes will constitute final memorialization of results of meeting.

Progress meetings shall be attended by Contractor's job superintendent, major Subcontractors and suppliers, City, and others as appropriate to agenda topics for each meeting.

Agenda will contain the following items, as appropriate:

- Review, revise as necessary, and approve previous meeting minutes
- Review of Work progress since last meeting
- Status of Construction Work Schedule, delivery schedules, adjustments
- Submittal, RFI, and Change Order status
- Review of the Contractor's safety program activities and results, including report on all serious injury and/or damage accidents
- Other items affecting progress of Work

#### **7.16 Right of Way Delays – Not Applicable**

If, through the failure of the City to acquire or clear right of way, Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor that amount that the Engineer may find to be a fair and reasonable compensation for that part of the Contractor's actual loss, that, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, as provided in Section 3.04 of this document with the following exceptions:

- The right of way delay factor for each classification of equipment shown in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is a part of the contract, will be applied to that equipment rental rate.
- The time for which the compensation will be paid will be the actual normal working time during which the delay condition exists, but in no case will exceed 8 hours in any one day.
- The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of the delay, except that when rental of equipment is paid for under the provisions in Section 3.4, Change in Contract Price, no payment will be made for right of way delays in conformance with the provisions of Section 7.11, Coordination with Utilities.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, cost of extra moving of equipment and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section and compensation for idle time of workers will be determined as provided in Section 3.4, Change in Contract Price, and no markup will be added in either case for overhead and profit.

The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided in Section 3.3, Change in Work.

If performance of the Contractor's work is delayed as the result of the failure of the City to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 7.6, Liquidated Damages, will be granted.



## **SECTION 8. MEASUREMENT AND PAYMENT**

### **8.1 Measurement of Quantities**

All Work except Work based on time and materials will be paid for at a contract price per unit of measurement and will be measured by City in accordance with the United States Standard Measures and Metric. Unless otherwise specifically provided, City will compute quantities by a method which, in City's opinion, is best suited to obtain an accurate determination. The weights of metalwork, pipe, and other metal parts to be paid for on the basis of weight, will be determined by City. City will not provide scales for weighing material. City will determine the weight of each part or item in the most practicable manner and will use for that purpose manufacturer's weights, or in their absence, catalog weights or estimated weights, in that order; provided, that weights of nonmetallic coatings will be excluded.

### **8.2 Deductions from Payments**

City may, at its option and at any time, retain out of any amounts due Contractor, sums sufficient to cover claims, filed pursuant to Section 3179 et seq. of the Civil Code.

### **8.3 Progress Payment – Not Applicable**

Unless otherwise agreed, Contractor shall submit to City, on or before the first (1<sup>st</sup>) day of each month, five (5) copies of a request for payment for the cost of the Work put in place during the period from the 1st day of the previous month to the 30th day of the previous month. Such requests for progress payments shall be based upon prices of all labor and acceptable materials incorporated in the Work up until midnight of the last day of that one month period, less the aggregate of previous payments. If Contractor is late submitting its payment request, that payment request may be processed at any time during the succeeding one month period, resulting in processing of Contractor's payment request being delayed for more than a day for day basis.

Acceptable materials shall be those materials which will become a part of the finished construction work. The basis for partial payments of lump sum or other unit Contract items will be determined by Contract between City and Contractor. City shall retain 5 percent of such estimated value of work done and 5 percent of the value of the materials so estimated to have been furnished and delivered and unused as aforesaid, and shall pay to Contractor, while carrying on the Work, the balance not retained as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract. No such estimate or payment shall be required to be made when, in the judgment of City, the Work is not proceeding in accordance with the provisions of the Contract, or when, in City's judgment, the total value of the Work done since the last estimate amounts to less than \$1,000. No such estimate or payment shall be considered to be an acceptance of any defective Work or improper materials. All progress estimates and payments shall be subject to correction in the final estimate.

Contractor shall, at the time any payment request is submitted, certify in writing the accuracy of the payment request and that Contractor has fulfilled all scheduling requirements of this Document 00700 including updates and revisions. The certification shall be executed by a responsible officer of Contractor.

When an item of work is designated as (F) in the Bid Form, (Document 00400), the estimated quantity for that item of work shall be the final pay quantity, unless the dimensions of any portion of that item are revised by the Engineer, or the item or any portion of the item is eliminated. If the dimensions of any portion of the item are revised, and the revisions result in an increase or decrease in the estimated quantity of that item of work, the final pay quantity for the item will be revised in the amount represented by the changes in the dimensions, except as otherwise provided for minor structures in Caltrans Standard Specifications, Section 51, "Measurement." If a final pay item is eliminated, the estimated quantity for the item will be eliminated. If a portion of a final pay item is eliminated, the final pay quantity will be revised in the amount represented by the eliminated portion of the item of work.

The estimated quantity for each item of work designated as (F) in the Bid Form, (Document 00400) shall be considered as approximate only, and no guarantee is made that the quantity which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantity based on computations does not equal the estimated quantity.

In case of discrepancy between the quantity shown in the Bid Form for a final pay item and the quantity or summation of quantities for the same item shown on the plans, payment will be based on the quantity shown in the Bid Form.

When an item of work is designated as (P) in the Bid Form, (Document 00400), a portion of the estimated quantity for that item of work shall be eligible for partial payment.

#### **8.4 Final Payment – Not Applicable**

As soon as practicable after Final Acceptance of the Work, Contractor shall submit to City five (5) copies of a final request for payment for the cost of the Work, which request will show deductions for prior payments and any other amounts to be retained under Section 8.2, Deduction from Payments. The amount determined due, less the amount retained, will be paid. This retained amount will not be due or payable until 35 days after the completion of all of the Work including punch list items and the recording of Notice of Completion and Final Acceptance in the manner provided by law, and until after Contractor has furnished City a release of any and all claims by Contractor or Subcontractors (Document 00650) against City arising by virtue of this Contract, except such claims in definite amounts as Contractor may specifically exempt from the operation of the release and the furnishing of any guaranty.

#### **8.5 Scope of Payment**

Payment for all items of Work at the unit or lump sum price shall be considered as full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to complete the item of Work, and no additional allowance will be made therefor.

Payment for items of Work which are called for in the Specifications or shown on the Drawings but which are not separately identified in the Bid form shall be compensated as part of the bid price of one or more of the items which are listed, and no additional allowance will be made therefor.

#### **8.6 Substitution Of Securities In Lieu Of Retention – Not Applicable**

Pursuant to provisions of Public Contract Code Section 22300, substitution of securities for any monies withheld under the Contract Documents to insure performance is permitted under following conditions:

At request and expense of Contractor, securities listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and City which are equivalent to the amount withheld under retention provisions of the Contract Documents shall be deposited with Controller or with a state or federally chartered bank in California, as the escrow agent, who shall then pay such monies to Contractor. Upon final acceptance and 35 days after the completion of all of the work including punch list items and the recording of the Notice of Completion, securities shall be returned to Contractor.

Alternatively, Contractor may request and City shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and Contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by Contractor. Upon final acceptance and 35 days after the completion of all of the work including punch list items and the recording of the Notice of Completion, Contractor shall receive from escrow agent all securities, interest, and payments received by the escrow agent from City, pursuant to the terms of this section. Contractor shall pay to each subcontractor, not later than twenty (20) Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of Contractor.

Contractor shall be beneficial owner of securities substituted for monies withheld and shall receive any interest thereon.

Contractor shall enter into escrow agreement according to Document 00680 (Escrow Agreement), as authorized under Public Contract Code Section 22300, specifying amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of the Contract Work.

## **8.7 Effect of Payment**

Payment will be made by City, based on City's observations at the Site and the data comprising the Application for Payment. Payment will not be a representation that City has:

- Made exhaustive or continuous on-Site inspections to check the quality or quantity of Work;
- Reviewed construction means, methods, techniques, sequences, or procedures;
- Reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by City to substantiate Contractor's right to payment; or made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

## **SECTION 9. CLAIMS BY CONTRACTOR**

### **9.1 General – Not Applicable**

#### **A Contract Interpretation Disputes:**

Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, Contractor shall give written notice to City. Contractor shall bear all costs incurred in the giving of such notice. All issues regarding the interpretation of the Specifications shall be referred to City for interpretation and determination. City shall have the right but not the obligation to affirm or disaffirm any City interpretation of the Plans or Specifications, which affirmance or disaffirmance shall be final. All issues regarding the Contract Documents shall be determined by City whose determination shall be final. If Contractor should disagree with City's determination regarding any aspect of the Contract Documents, Contractor's sole and exclusive remedy is to file a claim in accordance with this Section. Notwithstanding and pending the resolution of any claim, Contractor shall diligently prosecute the Disputed Work (as defined in following paragraphs) to Final Completion.

#### **B Work Disputes:**

Should any dispute arise under the Contract Documents respecting the true value of any Work performed, the implementation of the Work required by the Contract Documents, any Work omitted, any extra Work which Contractor may be required to perform or time extensions, respecting the size of any payment to Contractor during the performance of the Contract Documents, or of compliance with Contract Documents procedures, the dispute shall be decided by City and its decision shall be final and conclusive. If Contractor disagrees with City's decision, Contractor's sole and exclusive remedy is to file a claim in accordance with this Section. Notwithstanding and pending the resolution of any claim, Contractor shall diligently prosecute the Disputed Work to Final Completion.

The claim notice and documentation procedure described in this Section applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier. All Subcontractor and supplier claims of any type shall be brought only through Contractor as provided in this Section. Under no circumstances shall any Subcontractor or supplier make any direct claim against City.

"Claim" means a written demand or written assertion by Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of the Contract Documents terms, or other relief arising under or relating to the Contract Documents. In order to qualify as a "claim," the written demand must state that it is a claim submitted under this Section.

A voucher, invoice, payment application, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed Portion of the submission may be converted to a claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.

The provisions of this Section constitute a non-judicial claim settlement procedure, and also a claim presentment procedure by agreement under Section 930.2 of the Government Code, shall survive termination or completion of the Contract Documents, and may not be changed, waived, modified, or its requirements reduced absent a written change order approval by City Council. Contractor shall bear

all costs incurred in the preparation and submission of a claim. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 days. Any claims presented in accordance with the Government Code shall affirmatively indicate Contractor's prior compliance with the claims procedure herein and previous dispositions under Section 9.2, Procedures, below.

Contractor shall impose the claim notice and documentation requirements in this Contract on Contractor's subcontractors of all tiers, and require them to submit to Contractor all claims against Contractor and/or City within the times and containing the documentation required by this Section. The claim notice and documentation procedure described in this Section applies to all claims and disputes arising under the Contract Documents, whether or not specifically referred to in any specific Portion of the Contract. Government Code Section 930.2 et. seq. applies to this procedure.

## **9.2 Procedures – Not Applicable**

Should any clarification, determination, action or inaction by City, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with the Contract Documents, or otherwise result in Contractor seeking additional compensation in time or money for any reason (collectively "Disputed Work"), then Contractor and City shall make good faith attempts to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven (7) Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor must file a written notice of the Disputed Work with City stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of the Contract Documents. If a written notice of Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this Section, Contractor shall waive its rights to further claim on the specific issue.

City will review Contractor's timely notice of Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of the Contract Documents, it shall so notify City, in writing, within seven (7) Days after receiving the decision, that a formal claim will be issued. Within thirty (30) Days of receiving the decision, Contractor shall submit its claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within seven (7) Days and all justifying documentation within thirty (30) Days will result in Contractor waiving its right to the subject claim. If Disputed Work persists longer than thirty (30) days, then Contractor shall, every thirty (30) days until the Disputed Work ceases, submit to City a document titled "Claim Update" which shall update and quantify all elements of the Claim as completely as possible. Contractor's failure to submit a Claim Update or to quantify costs every thirty (30) days shall result in waiver of the claim for that thirty (30) day period. Claims or Claim Updates stating that damages will be determined at a later date shall not comply with this Section and shall result in Contractor waiving its claim(s).

Upon receipt of Contractor's formal claim including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as previously stipulated, City or its designee will review the issue and render a final determination. City may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further evidence or analysis requested by City to evaluate and decide Contractor's claim.

If Contractor's claims at project completion total less than \$375,000, then claims resolution shall proceed in the manner prescribed by Section 1.5, Chapter 1, Part 3 of Division 2 of the California Public Contract Code. If such claims exceed \$375,000, then Contractor shall prepare a compendium of claims not resolved as a result of these procedures, and submit them in a claim submitted under the Government Claims Act, Government Code Section 901 *et seq.*, for final investigation and consideration of their settlement prior to initiation of any litigation thereon, as required by Government Code Section 945.4. For all claims under or over \$375,000, pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 shall be reduced to 150 days.

Claims shall be calculated in the same manner as Change Orders per Section 3, Scope of Work. Except where provided by law, or elsewhere in these contract documents, if applicable, City shall not be liable for special or consequential damages. Contractor shall be limited in its recovery on claims to the change order calculations set forth in Section 3, Scope of Work.

**9.3 Claim Format - Not Applicable**

Contractor shall submit the claim justification in the following format: (a) Cover letter and certification of the accuracy of the contents of the claim, (b) summary of claim including underlying facts, entitlement, quantum calculations and Contract Document provisions supporting relief, (c) list of documents relating to claim including specifications, Plans, clarifications/requests for information, schedules, cost calculations, and other supporting documents, (d) chronology of events and correspondence, (e) analysis of claim merit, (f) analysis of claim cost, and (g) attach supporting documents referenced in (c).

**9.4 Mediation – Not Applicable**

All claims not subject to the claim resolution procedures set forth in Section 9.2, Procedures, shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties, and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

**9.5 Exclusive Remedy – Not Applicable**

Contractor's performance of its duties and obligations specified in this Section and submission and mediation of a claim as provided in this Section is Contractor's sole and exclusive remedy for the payment of money, extension of time, the adjustment or interpretation of Contract Documents terms or other contractual or tort relief arising from the Work. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout the Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or the Contract Documents, negligence or strict liability by City, its representatives, consultants or agents, or the transfer of the Work or the Project to City for any reason whatsoever. Contractor waives all claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with the claim submission requirements. Compliance with the claim submission and mediation procedures described in this Section is a condition precedent, and a prerequisite within the meaning of Section 930.6 of the Government Code, to the right to commence litigation or to seek to file a Government Code Claim (where applicable) or to commence any other legal action. No claim or issue not raised in a timely protest and timely claim submitted under this Section may be asserted in any Government Code Claim, in any subsequent litigation, or in any legal action. If Contractor fails to raise any claim(s) or issue(s) in a timely protest and timely claim submitted under this Section, then Contractor may not thereafter assert such claim(s) or issue(s) in any Government Code Claim, subsequent litigation, or legal action. City shall not be deemed to have waived any provision under this Section, if at City's sole discretion, a claim is accepted in a manner not in accord with Section.

**END OF DOCUMENT**

**SPECIAL CONDITIONS**

**PART 1 GENERAL**

**1.1 SUMMARY**

- A. Document includes summary of Work including:
  - 1.2 Work Covered By Contract Documents
  - 1.3 Bid Items, Allowances, and Alternates
  - 1.4 Work Under Other Contracts
  - 1.5 Contract Time
  - 1.6 Contract Security/Bond
  - 1.7 Work Sequence
  - 1.8 Contract Commencement Meeting and Reporting
  - 1.9 Work Days and Hours
  - 1.10 Payment
  - 1.11 Cooperation of Contractor and Coordination with Other Work
  - 1.12 Maintenance, Product Handling and Protection
  - 1.13 Partial Occupancy/Utilization Requirements
  - 1.14 Contractor Use of Premises
  - 1.15 Lines and Grades
  - 1.16 Protection of Existing Property, Structures and Utilities
  - 1.17 Damage to Existing Property
  - 1.18 Dust Control
  - 1.19 Parking
  - 1.20 Lay down / Staging Area
  - 1.21 Permits
  - 1.22 Punch List Verification
  - 1.23 Actual Damages for Violations
  - 1.24 Unfavorable Construction Conditions
  - 1.25 Construction Site Access
  - 1.26 Site Administration
  - 1.27 Weather Delay
  - 1.28 Project Record Documents
  - 1.29 City Supplied Materials
  - 1.30 Mobilization
- 2.1 Products Ordered In Advance
- 2.2 City-Furnished Products

**1.2 WORK COVERED BY CONTRACT DOCUMENTS**

- A. Work generally consists of providing all daily and ongoing maintenance needed for successful and high quality operation of the Blackberry Farm Golf Course, located at 22100 Stevens Creek Blvd., Cupertino. Furnish all labor, materials, equipment, services, authorizations, temporary controls, and all general conditions, general requirements and incidentals required to complete the Work in its entirety, as described in the Technical Provisions and the contract documents. All areas of golf play are included and all vegetated areas in use for golf purposes, unless noted otherwise. Work specifically does not include maintenance of the Pro Shop building, the Blue Pheasant Restaurant, parking areas, fencing, patios or paved walkways. Note that the work site contains habitat areas and protected wildlife species.
- B. The Work of this Contract includes work covered by unit price and/or lump sum.
- C. This Document and Document 00700 (General Conditions) and the Special Provisions includes measures that Contractor shall follow to execute the work.

### **1.3 BID ITEMS, ALLOWANCES, AND ALTERNATES**

#### **Bid Items**

- A. Any Bid Item may be deleted from the Work and Contract Sum, in total or in part, prior to or after award of Contract, without compensation in any form or adjustment of other Bid Items or prices therefore, in accordance with Document 00700 (General Conditions).
- B. Payment of all items is subject to the provisions of the Document 00700 (General Conditions).
- C. For all Bid Items, furnish and install all work indicated and described in Specifications and all other Contract Documents, including connections to existing systems. Work and requirements applicable to each individual Bid Item, or unit of Work, shall be deemed incorporated into the description of each Bid Item. Bidder should take particular notice that any and all items of Work, called for in the Contract Documents, but not included in a description of any specific bid item, shall be considered as included in one (1) or more of the bid items and that no additional compensation for those items of Work, beyond the Base Bid, will be allowed. Work of this nature includes, but is not limited to, such items as flagmen, water, all safety requirements, or work and materials required to provide public convenience and safety, barricades, lights, detours, and pedestrian walkways.
- D. For Lump Sum Bid items, bidder shall determine and include in its pricing all materials, labor, and equipment necessary to complete each Bid Item as shown and specified in the Contract Documents.

#### **Allowances - NOT USED**

#### **Alternates**

- A. Alternate Item No. 1 – Provide Maintenance at Blackberry Farm Golf Course, July 2016 – June 2017: The price paid under this item shall include all costs for all maintenance tasks, activities, materials, equipment and associated costs as indicated in the Technical Provisions and contract documents.
- B. Alternate Item No. 2 – Provide Maintenance at Blackberry Farm Golf Course, July 2017 – June 2018: The price paid under this item shall include all costs for all maintenance tasks, activities, materials, equipment and associated costs as indicated in the Technical Provisions and contract documents.

### **1.4 WORK UNDER OTHER CONTRACTS**

Work at the site performed by others may include landscaping, maintenance, improvements or other activities by City staff or by a City contractor.

### **1.5 CONTRACT TIME**

The Contract Time is proposed to commence on January 1, 2016.

The first term of this contract shall be for six months from the start date of the contract. The intention is to align work to be performed and contract dates with the city's fiscal year calendar. The City shall retain the option to extend the contract for up to two years based upon the prices quoted for Bid Alternate No. 1, addressing services July 2016-June 2017, and for Bid Alternate No. 2, addressing services July 2017-June 2018. The City anticipates that a 2.5 year interval will constitute the likely maximum original term of the contract. The City shall retain the option to extend the term of the contract thereafter on a year-to-year basis not exceeding three (3) years, for a possible total contract duration of five and one half (5.5) years.

Any such renewal after the first 2.5 years shall be accomplished by the City providing a written notice of renewal to the Contractor at least 30 days prior to expiration of the term. Any such renewal shall contain the same provisions as the original contract, including any increase or decrease in compensation paid to the Contractor. Any increase or decrease in the previous contract price shall be based on the annual percentage change in the Consumer Price Index (CPI) as of April of the year the adjustment is being made. The CPI shall be the San Francisco/Oakland Consumer Price Index for all urban wage earners.

### **1.6 CONTRACT SECURITY/BOND**

Not used.

## **1.7 WORK SEQUENCE**

Contractor shall allow safe passage thru the course at all times. The patrons must be allowed to use the facilities at all times.

## **1.8 CONTRACT COMMENCEMENT MEETING AND REPORTING**

The City will schedule a contract commencement meeting prior to the Contractor starting work. Contractor shall supply the following information at the meeting: list of pesticides, fertilizers, weed controls and any other chemicals to be used on site. Information shall contain the type of chemical, application rate and the manner of application, which must be approved by the City prior to start of work. Use of copper-based pesticides, diazinon, organophosphates, and chlorpyrifos is prohibited. Contractor is encouraged to recommend the use of less toxic alternatives for all chemicals. This reporting is required to be given to the City and to Santa Clara County.

City may request periodic meetings with the Contractor's Integrated Pest Manager and/or Environmental Programs Manager to discuss the facilities.

Annually provide evidence that Contractor's foreman or lead worker is properly trained on current Integrated Pest Management techniques. Monthly reporting of the date, specific location, active ingredient, trade name, EPA#, quantity, and target pest is required by the 10<sup>th</sup> day of every month on each chemical used during the previous month.

## **1.9 WORK DAYS AND HOURS**

Work hours and noise pose a special concern for projects in residential neighborhoods. The City is very concerned for its residents and will diligently enforce the restrictions below. Each violation of the restrictions by the general contractor, subcontractors, suppliers, vendors and others working on the project may result in a \$2,000 penalty being assessed against the Contractor and deducted from each progress payment.

- A. **Standard Work Hours for Construction:** 7:00 a.m.-8:00 p.m. local time seven days a week.
- B. **Work Noise Hours:** No work may take place that generates 50dBA of noise within 25 feet of the source before 7:00 a.m. or after 8:00 p.m. on any day of the week. Work shall comply with City municipal code Chapter 10.48 regarding noise control and other applicable requirements.
- C. **Morning Work Hours:** Routine and normal maintenance activities may commence at 5 a.m. provided that all city noise ordinances and restrictions are adhered to, with a special attention paid to noise generated by use of power equipment.
- D. **Equipment and Material Delivery and Off-Haul Hours:** No equipment or material may be delivered or off-hauled via San Fernando Avenue and the Blackberry Farm Park entry except between the hours of 7:00 a.m. and 8:00 p.m., unless City provides advance written authorization. No equipment that has a safety back up beeper may be operated before 7:00 a.m. on any day, unless City provides advance written authorization.

## **1.10 PAYMENT**

Payment shall be made monthly. Contractor shall invoice monthly.

## **1.11 COOPERATION OF CONTRACTOR AND COORDINATION WITH OTHER WORK**

- A. Coordinate with City and any City forces, or other contractors and forces, as required by Document 00700 (General Conditions) and this document. City's facility will be accessible and useable at all times.
- B. The existing facilities must be kept open to the public daily.

## **1.12 MAINTENANCE, PRODUCT HANDLING, AND PROTECTION**

- A. Transport, deliver, handle, and store materials and equipment at the Site in such a manner as to prevent the breakage, damage or intrusions of foreign matter or moisture, and otherwise to prevent damage.
- B. Hazardous substance compliance: Provide City with copies of the OSHA Material Safety Data Sheets (MSDS) for all products containing a hazardous substance, examples: Adhesives, paints, sealants, and the like.



- C. Packaging: Provide packaged material in manufacturer's original containers with seals unbroken and labels intact until incorporated into the Work.
- D. Remove all damaged or otherwise unsuitable material and equipment promptly from the Site.
- E. Protection: Protect all finished surfaces.
- F. Asbestos Removal: If, during the progress of the Work, suspected asbestos-containing products are identified, Contractor shall stop work in the affected area and engage an asbestos removal Subcontractor to verify the materials and, if necessary, encapsulate, enclose, or remove and dispose of all asbestos in accordance with current regulations of the Environmental Protection Agency and the U. S. Department of Labor – Occupational Safety and Health Administration, the state asbestos regulating agency, and any local government agency. Payment for such work will be made by Change Order.  
Asbestos Removal Subcontractor's Qualifications. The Subcontractor for asbestos removal shall be regularly engaged in this type of activity and shall be familiar with the regulations that govern this work. The Subcontractor shall demonstrate to the satisfaction of City that it has successfully completed at least three asbestos removal projects, that it has the necessary staff and equipment to perform the work, and that it has an approved site for disposal of the asbestos. Liability insurance covering the asbestos abatement work shall be provided as specified in the Supplementary Conditions.  
Asbestos Removal Methods. The asbestos removal Subcontractor shall submit a work plan of its proposed removal procedure to City before beginning work and shall certify that the methods are in full compliance with the governing regulations. The work plan shall cover all aspects of the removal, including health and safety of employees and building occupants, hygiene facilities, employee certification, clearance criteria, transportation and disposal, enclosure techniques, and other techniques appropriate for the proposed work.

#### **1.13 PARTIAL OCCUPANCY/UTILIZATION REQUIREMENTS - NOT APPLICABLE**

- A. Allow City to take possession of and use any completed or partially completed portion of the Work during the progress of the Work as soon as is possible without interference to the Work.
- B. Possession, use of Work, and placement and installation of equipment by City shall not in any way evidence the completion of the Work or any part of it.
- C. Contractor shall not be held responsible for damage to the occupied part of the Work resulting from City occupancy.
- D. Make available, in areas occupied, on a 24-hour per day and 7-day per week basis if required, any utility services in condition to be put in operation at the time of occupancy.
  - 1. Responsibility for operation and maintenance of said equipment shall remain with Contractor.
  - 2. Make, and City shall certify, an itemized list of each piece of equipment so operated with the date operation commences.
  - 3. Itemized list noted above shall be basis for commencement of warranty period for equipment.
  - 4. City shall pay for utility cost arising out of occupancy by City during construction.
- E. Use and occupancy by City prior to acceptance of Work does not relieve Contractor of its responsibility to maintain insurance and bonds required under the Contract until entire Work is completed and accepted by City.
- F. Prior to date of Final Acceptance of the Work by City, all necessary repairs or renewals in Work or part thereof so used, not due to ordinary wear and tear, but due to defective materials or workmanship or to operations of Contractor, shall be made at expense of Contractor, as required in Document 00700 (General Conditions).
- G. Use by City of Work or part thereof as contemplated by this Document 00800 shall in no case be construed as constituting acceptance of Work or any part thereof. Such use shall neither relieve Contractor of any responsibilities under Contract, nor act as waiver by City of any of the conditions thereof.
- H. City may specify in the Contract Documents that portions of the Work, including electrical systems or separate structures, shall be substantially completed on dates described in preceding paragraphs of this Document 00800, if any, prior to substantial completion of all of the Work. Notify City in writing when Contractor considers any such part of the Work ready for its intended use and substantially complete and request City to issue a Certificate of Substantial Completion for that part of the Work.

#### **1.14 CONTRACTOR USE OF PREMISES**

- A. Confine operations at Site and to areas permitted by Contract Documents, permits, ordinances, and laws.
- B. Do not unreasonably encumber Site with materials or equipment.
- C. Assume full responsibility for protection and safekeeping of products stored on premises.
- D. Move any stored products that interfere with operations of City or other contractor.

- E. Parking, storage, staging, trailer and work areas shall be coordinated and approved by the City and comply with all other Contract documents requirements. Contractor's use of the premises for trailer, storage and parking is limited to areas the City will allow.

#### **1.15 LINES AND GRADES - NOT APPLICABLE**

- A. All Work shall be done to the lines, grades, and elevations indicated on the Drawings and as specified in section 02015.
- B. The Contractor is to provide all surveying for the project. The City will not be providing any points for horizontal or vertical controls. All additional survey, layout, and measurement work shall be performed by Contractor as a part of the Work and paid for in various items of work.
- C. Contractor shall provide at its cost an experienced instrument person, competent assistants, and such instruments, tools, stakes and other materials required to complete the survey, layout, and measurement work. In addition, Contractor shall furnish, at its cost, competent persons and such tools, stakes, and other materials as City (and/or any Engineer) may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by Contractor.
- D. Contractor shall keep City informed, a reasonable time in advance, of the times and places at which it wishes to do Work, so that any checking deemed necessary by City may be done with minimum inconvenience to City and minimum delay to Contractor.
- E. Contractor shall remove and reconstruct Work that is improperly located.

#### **1.16 PROTECTION OF EXISTING PROPERTY, STRUCTURES AND UTILITIES**

- A. The contract documents may indicate existing above-grade and below-grade structures, drainage lines, storm drains, sewers, water, gas, electrical, water, phone and data cable and other similar items and utilities that are known to City.
- B. Contractor shall locate these known existing installations before proceeding with trenching or other operations which may cause damage, shall maintain them in service where appropriate, and shall repair any damage to them caused by the Work, at no increase in Contract Sum.
- C. Additional utilities whose locations are unknown to City are suspected to exist. Contractor must be alert to their existence. If additional utilities are encountered, Contractor must immediately report to City for disposition.
- D. In addition to reporting, if a utility is damaged, Contractor must take appropriate action as provided in Document 00700 (General Conditions).
- E. Additional compensation or extension of time on account of utilities not indicated or otherwise brought to Contractor's attention including reasonable action taken to protect or repair damage shall be determined as provided in Document 00700 (General Conditions).
- F. Contractor shall carry out construction activities in a manner that does not disrupt privacy, access to private property, or traffic, except as allowed by permit, or does not disrupt the flow of storm water or impair the storm water channel.

#### **1.17 DAMAGE TO EXISTING PROPERTY**

- A. Contractor will be responsible for any damage to existing structures, Work, materials, or equipment because of its operations and shall repair or replace any damaged structures, Work, materials, or equipment to the satisfaction of, and at no additional cost to, City.
- B. Contractor shall protect all existing structures and property from damage and shall provide bracing, shoring, or other work necessary for such protection.
- C. Contractor shall be responsible for all damage to streets, roads, curbs, sidewalks, highways, shoulders, ditches, embankments, culverts, bridges, or other public or private property, which may be caused by transporting equipment, materials, or workers to or from the Work. Contractor shall make satisfactory and acceptable arrangements with the agency having jurisdiction over the damaged property concerning its repair or replacement.

#### **1.18 DUST CONTROL**

- A. Contractor shall take reasonable measures to prevent unnecessary dust. The following items shall be specifically implemented to control dust:
  - 1. All construction locations with active excavation shall be watered at least twice daily or more often as necessary.

2. Cover all trucks hauling soil, sand, and other loose materials; or require all trucks to maintain at least two feet of freeboard.
  3. Pave, apply water daily, or apply non-toxic soil stabilizers on all un-paved access roads, parking areas, and staging areas at construction site.
  4. Sweep daily or more often as necessary, with water sweepers all paved access roads, parking areas, and staging areas at construction sites during project.
  5. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
  6. Limit the speed of all construction vehicles to 5 miles per hour while on the Site.
- B. Buildings, swimming pools, or operating facilities which may be affected adversely by dust shall be adequately protected from dust. Existing and new machinery, motors, instrument panels, or similar equipment shall be protected by suitable dust screens. Proper ventilation shall be included with dust screens.

#### **1.19 PARKING**

Contractor and staff may use the Golf Course Maintenance Building site for parking year round. Subject to City's discretion, Contractor may use adjacent parking in Blackberry Farm Park. City reserves the right to deny use of this area when the park is being used during its operating period for the pools and picnic grounds currently from May to September, or during any planned events, or for City's convenience. If parking is restricted the Contractor may be allowed to park at the golf course clubhouse. The City may allow temporary parking of equipment in the parking lot with prior approval from the City and at the Contractor's own risk.

#### **1.20 LAYDOWN/STAGING AREA – NOT APPLICABLE**

Contractor shall utilize the area approve by the City for storage of all materials.

#### **1.21 PERMITS**

Applicable permits: Permits, agreements, or authorizations that may apply to this project are listed below:

Cal/OSHA Permit: The Contractor shall obtain, as applicable, a permit as required by Cal/OSHA for each of the following:

- Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.
- Construction or demolition of any building, structure, or scaffolding for false-work more than three stories high, or the equivalent height (36 feet).
- Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).

All other permits that may be required, have not been applied for and shall be obtained by Contractor. Applicable permit fees will be reimbursed to the extent specified in Document 00700 (General Conditions).

#### **1.22 PUNCH LIST VERIFICATION - NOT APPLICABLE**

A punch list examination will be performed upon Substantial Completion of Work. One follow-up review of punch list items for each discipline will be provided. If multiple Site visits are required to review punch list items, due to incompleteness of the Work by Contractor, Contractor may be required to reimburse City for these visits.

#### **1.23 ACTUAL DAMAGES FOR VIOLATIONS**

- A. In addition to damages which are impracticable or extremely difficult to determine, City may incur actual damages resulting from loss of use of any permit described in this Document, or from use in violation of legal or regulatory requirements where the violations result from Contractor's activities. Violations or threatened violations may subject the City to fines and/or other costs or civil liabilities.
- B. Contractor shall be liable for and shall pay City the amount of any actual losses in addition to other remedies provided by the Contract Documents.

- C. Any money due or to become due to Contractor may be retained by City to cover actual damages described above and, should such money not be sufficient to cover such damages, City shall have the right to recover the balance from Contractor.

**1.24 UNFAVORABLE SITE CONDITIONS**

During unfavorable weather, wet ground, or other unsuitable construction conditions, Contractor shall confine its operations to Work, which will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions, which would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by Contractor to perform the Work in a proper and satisfactory manner.

**1.25 PROJECT SITE ACCESS**

Contractor shall, at all times, limit access to the Site to necessary personnel only. All personnel associated with the Project shall enter the site through Contractor's access gate. All mail and deliveries (Federal Express, equipment, etc.) shall be sent to a separate address, specifically arranged by Contractor for the Project. Contractor is responsible for providing adequate signage to alert delivery persons to the new address.

**1.26 SITE ADMINISTRATION**

Contractor shall be responsible for all areas of the Site used by it and by all Subcontractors in the performance of the Work. Contractor shall exert full control over the actions of all employees and other persons with respect to the use and preservation of property and existing facilities, except such controls as may be specifically reserved to City or others. Contractor shall have the right to exclude from the Site all persons who have no purpose related to the Work or its inspection, and may require all persons on the Site (except City's employees) to observe the same regulations Contractor requires of its employees.

**1.27 WEATHER DELAY - NOT APPLICABLE**

**1.28 PROJECT RECORD DOCUMENTS - NOT APPLICABLE**

Contractor shall prepare Record Drawings and Specification in accordance with Document 00700, recording and tracking changes in a timely manner. Contractor shall make copies of the annotated Project Record Drawings and Specifications available to City and the Engineer of Record at intervals convenient to the Engineer of Record, who will be responsible for the preparation of the Final Record Drawings and Specifications.

**1.29 CITY SUPPLIED MATERIALS - NOT APPLICABLE**

**1.30 MOBILIZATION - NOT APPLICABLE**

Mobilization shall conform to the provisions in Section 11, "Mobilization" of the Standard Specifications.

**PART 2 PRODUCTS**

**2.1 PRODUCTS ORDERED IN ADVANCE - NOT APPLICABLE**

**2.2 CITY-FURNISHED PRODUCTS - NOT APPLICABLE**

A. City's Responsibilities:

1. Arrange for and deliver City-reviewed Shop Drawings, Product Data, and Samples, to Contractor.
2. Arrange and pay for delivery to site.
3. On delivery, inspect City and Contractor provided products jointly with Contractor.
4. Submit claims for transportation damage and replace damaged, defective, or deficient items.
5. Arrange for manufacturers' warranties, inspections, and service.

B. Contractor's Responsibilities:

1. Review City-reviewed Shop Drawings, Product Data, and Samples.
2. Receive and unload City and Contractor provided products at site; inspect for completeness or damage jointly with City.
3. Handle, store, install, and finish products.
4. Repair or replace items damaged after receipt.
5. Install into Project per Contract Documents.

**PART 3 EXECUTION – NOT USED**

END OF DOCUMENT

## **SPECIAL ENVIRONMENTAL CONDITIONS**

### **PART 1 - GENERAL**

#### **1.01 SECTION INCLUDES:**

Requirements for compliance with environmental documents, resource agency standards, and related environmental regulations.

#### **1.02 Not Used**

#### **1.03 ARCHAEOLOGICALLY SENSITIVE AREAS**

General: It is the intent of the City to comply with all State and Federal laws related to the protection of cultural resources. Contractor's attention is directed to Section 106 of the National Historic Preservation Act of 1966 (36 CFR 800, revised 1999). California Public Resources Code Chapter 1.7, Section 5097.5 makes it a misdemeanor for anyone to knowingly disturb a historical feature. California Public Resources Code Sections 5097.98 and 5097.99 require protection of Native American remains which might be discovered and outline procedures for handling any burial found. The California Public Resources Code Section 5097.9 and Health and Safety Code 7050 require coordination with the State Native American Heritage Commission (NAHC).

Contractor's attention is directed to the fact that the project site is near an archaeologically sensitive area, but is not known to contain any archaeological or cultural resources. However, it is possible that the project could reveal as yet unknown prehistoric or historic archaeological resources. Work shall comply with applicable measures.

- A. Upon discovery of possible buried prehistoric and historic cultural materials (including potential Native American skeletal remains), work within 25 feet of the find shall be halted and the City shall be notified. The City shall retain a qualified archaeologist to review and evaluate the find. Construction work shall not begin again until the archaeological or cultural resources consultant has been allowed to examine the cultural materials, assess their significance, and offer proposals for any additional exploratory measures deemed necessary for the further evaluation of, and/or mitigation of adverse impacts to, any potential historical resources or unique archaeological resources that have been exposed. If the discovery is determined to be a unique archaeological or historical resource, and if avoidance of the resource is not possible, the archaeologist shall inform the City of the necessary plans for treatment of the find(s) and mitigation of impacts. The treatment plan shall be designed to result in the extraction of sufficient non-redundant archaeological data to address important regional research considerations. The City shall insure that the treatment program is completed. The work shall be performed by the archaeologist and shall result in a detailed technical report that shall be filed with the Northwest Information Center, Sonoma State University. Construction in the immediate vicinity of the find shall not recommence until treatment has been completed. If human remains are discovered, they shall be handled in accordance with State law including immediate notification of the County Medical Examiner/Coroner.
- B. All excavation contracts for the project shall contain provisions for stop-work in the vicinity of a find exposing archaeological resources during subsurface construction. In addition, the contract documents shall recognize the need to implement any mitigation conditions required by the permitting agency. In general, the appropriate construction conditions should be included in any contract that has the potential for ground disturbing operations.

#### **1.04 TREE PROTECTION ZONES AND ENVIRONMENTALLY SENSITIVE AREAS**

Tree protection zones (TPZs) include installation of protective fencing and sensitive work within these areas, under the direction of the City and City's Arborist.

If for any reason construction requires the removal of a protected tree, a tree removal permit would have to be obtained in advance from the City. All requirements for removal as stated in the tree removal permit, including installation of replacement trees, would have to be followed.

Potential impacts to protected trees on or adjacent to the site resulting from construction activities would be minimized by implementing measures consistent with Chapter 14.18, Appendix A of the Cupertino Municipal Code: Standards for the Protection of Trees during Grading and Construction Operations of the City of Cupertino Tree Ordinance.

All tree pruning shall be completed or supervised by a certified arborist or the City arborist, unless otherwise acceptable to City, and adhere to the Best Management Practices for Pruning of the ISA.

Contractor's attention is directed to the fact that the project site is in a natural setting which includes wildlife that may be temporarily disturbed by construction activities. Although routine maintenance activities may usually proceed, unusual activities or construction activity may require establishment of an Environmentally Sensitive Area (ESA) if a sensitive or protected species establishes in the project area and could be adversely affected. If needed, the exact location of the boundaries of ESA(s) shall be established by the City's representative.

Contractor shall place temporary high visibility fence at the boundary of each ESA. Within the boundaries of the fenced ESA, no project related activities shall take place. Contractor shall preserve and protect the ESA at all times and is prohibited from entering fenced ESA for any purpose. This specifically prohibits vehicle access, storage, or transport of any materials, including hydrocarbon and lead contaminated materials or any other project related activities. An ESA shall only be removed upon written direction from the Engineer.

#### **1.05 WILDLIFE PROTECTIVE MEASURES**

The environmental review process has identified biological measures that shall be applied as wildlife protective measures and shall be implemented before, during, and after construction. Contractor shall comply with all project permits and the following provisions as a requirement of the Contract:

##### **A. Creek Corridor & Wetlands**

Contractor shall take all reasonable precautions to prevent incidental incursions of personnel, equipment or materials into wetlands, creek channel areas and adjacent vegetation that are outside the noted work limits. Contractor shall remain within designated work area limits during construction along creek areas within the project limits. No work is permitted below the top of bank unless specifically noted in the contract documents.

##### **B. Western Pond Turtle (WPT), California Red-Legged Frog (CRLF) and San Francisco Dusky-footed Woodrat**

Special-status wildlife species could potentially be affected by project activities. All work shall be performed in accordance with applicable permit and resource agency requirements and applicable regulations:

The following avoidance measures shall be implemented.

If during the course of work WPT or woodrats are detected, work in the vicinity shall be suspended and the Contractor shall immediately notify the City. City shall provide a biologist or qualified monitor to assist in providing proper guidance and protection of the animal(s).

In the past, CDFW has approved protocols for the WPT stating that if a turtle is detected, the turtle will be observed to determine if it is moving through the area in which it was detected or if the animal is occupying the habitat for nesting, foraging, or basking. During construction activities within the immediate area of the turtle detection, a City-provided biologist or qualified monitor will work with construction crews. If the animal is relocated during construction activities, the monitor will observe the turtle and alert work crews to delay work if it is within the work area or begins to move toward or into the work area. If the turtle appears to be traveling from upland habitat to a nearby aquatic site, work shall cease until the turtle has traveled a safe distance from the immediate project site. The monitor shall observe the animal from a distance to ensure it does not wander back into the work area. If the turtle is relocated and appears to be occupying the habitat within the project footprint for activities such as nesting, basking, or foraging, the City or its representatives will contact CDFW for guidance.

If at any time during construction San Francisco dusky-footed woodrat are detected, work shall be suspended in the vicinity and Contractor shall immediately notify the City. City shall provide a biologist or qualified monitor to assist in providing proper guidance and protection of the animal(s). CDFW should be contacted on how to proceed (since they are State Species of Special Concern). These mammals live year round in their houses, which are essential for their survival. Woodrats dwell in moderately-dense to dense riparian habitats, such as those found along portions of Stevens Creek. CDFW has generally accepted the following guidelines for avoidance/minimization of effects on San Francisco dusky-footed woodrat houses, listed in order of priority and implementation:

- The project work will be rerouted to avoid the woodrat house by at least 50 feet.
- If the work cannot be rerouted at least 50 feet from the house, it will be rerouted as far away from the house as possible but not closer than 5 feet from the house. Safety and/or silt fencing (for houses downslope) will be erected around all houses within 25 feet of the construction activity to avoid impacts during construction.
- If the project footprint must go directly through or within 5 feet of a house, CDFW should be consulted with one of the two following options:
  1. If the house appears inactive seek approval from CDFW to dismantle the house and replace the lost resource by building an artificial house. One artificial house should be built for every one existing inactive house.
  2. If the house appears active, approval will be sought from CDFW to: 1) trap the occupant(s) of the house, 2) dismantle the house, 3) construct a new artificial house with the materials from the dismantled house, and 4) release the occupant into the new artificial house. The new house should be placed as close to its original location as feasible and as far from the project footprint as necessary to be protected from construction activities. If the house is to be moved downslope of the project footprint, extra precautions should be taken, such as a plywood barrier, to stop falling/sliding materials from impacting the new house. Houses should only be moved in the early morning during the non-breeding season (October through February). If trapping has occurred for 3 consecutive nights and no woodrats have been captured, the house should be dismantled and a new house constructed.

*Speed Limit.* Vehicles shall not drive more than 5 miles per hour within the project area. If any woodrats, WPT or CRLF are seen in the path of a vehicle, the vehicle shall stop until the animal is out of the path. Parked vehicles shall be checked underneath before they are moved to ensure that no protected wildlife is on the ground below the vehicle.



### C. Bats

Bats are protected by California Department of Fish and Game Code Section 4150 and are considered nongame mammals. Nongame mammals or parts thereof may not be taken or possessed except as provided by code or in accordance with adopted regulations.

### D. Noise

Contractor shall limit work to the hours noted elsewhere. Any deviation from these hours shall be approved in writing by City.

Contractor shall maintain and operate all equipment consistent with the manufacturer's specifications. Construction equipment will include available noise suppression devices and properly maintained mufflers.

Contractor shall site fixed and mobile equipment to minimize noise emissions outside the right-of-way, and shall minimize the staging of construction equipment and unnecessary idling of equipment in the vicinity of residences and other sensitive receptors.

## **1.06 RAPTORS AND OTHER NESTING BIRDS**

The Contractor is to note that nesting/breeding birds, including raptors, may be present in the project area. For all migratory birds except raptors, the nesting season in the project area is considered to be from February 15<sup>th</sup> to August 31<sup>st</sup>. It is against the law to harm these birds or their eggs or active nests, and other wildlife, as per the Migratory Bird Treaty Act and the California Fish and Game Code.

All work shall be performed in accordance with the measures below.

- Vegetation, tree, and building or structure removal activities within the project area should be scheduled if feasible to take place outside of the nesting season (Feb. 1 to Aug. 31) to avoid impacts to nesting birds. Every attempt shall be made to protect trees that contain raptor nests.
- Raptors: If an active raptor nest is located during the raptor breeding season, (February 1 to August 31), Contractor shall notify City and be prepared to modify work procedures around the active raptor nest or establish an ESA if required.
- Other Nesting Birds: In the event that an active nest or roost is discovered in the construction areas, or in adjacent areas considered by the City biologist to be disturbed by construction, the Contractor shall notify City and be prepared to establish an ESA as directed by the City. Routine maintenance may normally continue, however no construction activity may occur within the ESA until City coordinates with appropriate authorities to develop alternatives to avoid take of the nest. Once consultation is complete, work may begin/resume when permission is obtained from City to remove the ESA.

## **1.07 BEE HIVES**

Bee hives are known to occur within trees and below ground in close proximity to and within the work limits. At the joint site walk referenced in Section 1.06 above, known existing bee hives will also be identified.

Contractor shall address stinging insects in their Safety Plan, and shall conduct safety training and provide personal protective equipment (PPEs) for working around stinging insects as needed. Contractor shall inform workers to be aware of bee hives and exercise caution not to disturb hives during work related activities.

No hives shall be disturbed outside the work limits. If a previously unidentified hive is discovered within the work limits, Contractor shall notify the City immediately and inform workers of the newly identified hive. In the event

that a hive is disturbed, Contractor shall notify the City and conduct work in proximity of hive in accordance with the approved Safety Plan.

## **1.08 SUDDEN OAK DEATH**

The Contractor is responsible for complying with any requirements regarding Sudden Oak Death (SOD), including any requirements from the Santa Clara Agricultural Commissioner or federal agencies regarding quarantines for plant material.

The Contractor shall be thoroughly familiar with the provisions of 7 CFR Part 301, Phytophthora Ramorum; Quarantine and Regulations (Federal Register Vol. 67, No. 31 6827-6837, dated Thursday, February 14, 2002), hereafter referred to as the Rules and Regulations.

The Contractor shall avoid activities that could result in a need to comply with the specified Rules and Regulations to the maximum extent practicable. In the event that a situation arises that cannot be avoided involving one or more of the quarantined species, soils or other regulated materials as defined therein, the Contractor shall implement the provisions in the specified Rules and Regulations. Furthermore, the Contractor shall contact the Santa Clara County Agriculture Commissioner (SCCAC) for additional information and direction.

The City shall be notified immediately in the event a situation arises requiring compliance with the Rules and Regulations and subsequent notification of the SCCAC. Furthermore, documentation shall be provided to the City enumerating the steps taken to comply.

The Contractor shall follow precautionary measures to help limit the inadvertent spread of SOD disease, including but not limited to the following:

- a. Conduct operations during the dry season as much as possible and in a manner that will minimize and prevent wet soil, mud and plant material adhering to vehicles, equipment, and boots; utilize paved and rocked roads and landings to the extent possible.
- b. Inspect material and equipment before it enters the site to ensure that no host material (soil or attached pieces of plants) is being transported into the site.
- c. Completely clean all mud, dirt and soil from shoes, boots, vehicles and equipment that were used on any site within a SOD zone, to remove soil and any imbedded host plant material, prior to bringing such items to the work site.
- d. Equipment coming from potentially SOD-infested sites must be completely cleaned of soil and plant material at that site and inspected carefully to ensure potential SOD-containing soil, or parts of plants, is not transported to the project site.
- e. All plants and all soil material that is brought to the site for use in the project must be from SOD-free sources and SOD-free regions, and must be able to provide appropriate documentation or certification.
- f. If Contractor equipment or forces have worked in a SOD zone:
  - Prepare and use sanitation kits consisting of chlorine bleach and water (10:90 mixture of bleach:water), Clorox Cleanup (registered trademark) or Lysol (registered trademark), a scrub brush, metal scraper, or boot brush; and plastic gloves.
  - Disinfect tools used in tree removal and pruning with Lysol spray, a 70% or greater solution of alcohol or a Clorox solution (1 part Clorox: 9 parts water, or Clorox Clean-up). If equipment such as a chain saw cannot be treated with disinfectants, consider run nit it through a non-host plant before leaving the infested site to break fee any lodged material.
  - Sanitize shoes, pruning gear, and other equipment before working in the project area.
  - Before leaving a SOD disease infected site, use all reasonable methods to sanitize gear and equipment. Scrape, brush, and/or hose off accumulated soil andmud from clothing, gloves, boots, and shoes. Remove mud, earth and plant debris by blowing out or power washing trucks and other equipment and vehicles. If complete on-site sanitation is not possible, finish decontaminating at a local power was facility or an isolated area in an equipment yard.

- Additional information on Sudden Oak Death may be obtained by visiting [http://suddenoakdeath.cnr.berkeley.edu/html/treatment\\_management.html](http://suddenoakdeath.cnr.berkeley.edu/html/treatment_management.html).

## 1.09 HYDROLOGY AND FLOODING

Much of the land along Stevens Creek including Blackberry Farm Park and Golf Course, and some or all of the proposed work site, falls within a known flood plain and is subject to flooding during storm and high water events. Flooding can occur swiftly and with no advance notice. Upstream of the project site, the Santa Clara Valley Water District (SCVWD) operates the Stevens Creek Reservoir and Dam. SCVWD may choose to implement releases of water from the reservoir without notice that may exacerbate high water or flood conditions in the Stevens Creek Corridor. Flooding can inundate portions of the work site within the flood plain at any time during the rainy season. Furthermore, such flood waters can bring aquatic wildlife, including federally-threatened steelhead, into the work site. Steelhead are federally protected and any harm to them or to their habitat can result in severe penalties.

Because of these circumstances, the Contractor must be prepared to completely clear the work site and to completely remove all equipment, tools, materials and other property from the work site if flooding conditions may occur. A special effort shall be made to remove first any items that could harm water quality or harm wildlife should they come into contact with creek waters. Contractor shall be prepared to implement such a clearing effort immediately, 24 hours per day, 7 days per week throughout the flood season (October 15 to April 30). It shall be the Contractor's responsibility to keep himself or herself apprised of weather and storm conditions during this time that could lead to a high water event. The Contractor's attention is directed to the SCVWD website which contain information about reservoirs' status at <http://alert.valleywater.org/gageresv-cross.html>, and information about stream gauging stations including an upstream Stevens Creek stream gauge, Alert ID #1482 at <http://alert.valleywater.org/gagestrm.html>. The data are guaranteed as accurate but provide reference information that can be useful.

In the event of a significant flood event, the City would also close the trail corridor and would post signage at the Stevens Creek Boulevard/San Fernando Avenue and McClellan Ranch Road entrances alerting trail users of this closure.

## 1.10 OTHER ENVIRONMENTAL REQUIREMENTS FOR THIS PROJECT

Some of the applicable measures are identified below.

**Avoidance Measures:** The following standard Best Management Practices (BMPs) will be implemented to minimize project impacts to aquatic habitat and water quality:

- Construction equipment will be staged in upland and/or currently developed or disturbed areas to avoid disturbance to sensitive habitat areas and reduce the potential for sediment and materials to enter the creek.
- No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the U.S. or State (Stevens Creek).

**The following Best Management Practices** are included from the Santa Clara Valley Water District's *Best Management Practices Handbook* (January 2009 or most recent update), to reduce or avoid environmental impacts resulting from potential construction:

### WQ-5 Soil Stockpiles

If soil is to be stockpiled, no run-off shall be allowed to flow back to creek.

**WQ-18 Site Maintenance and Cleanup**

The work site, areas adjacent to the work site, and access roads will be maintained in an orderly condition, free and clear from debris and discarded materials. Personnel will not sweep, grade, or flush surplus materials, rubbish, debris, or dust into storm drains or waterways. Upon completion of work, all building materials, debris, unused materials, concrete forms, and other construction-related materials will be removed from the work site.

**WQ-41 Erosion and Sediment Control Measures**

Suitable erosion control, sediment control, source control, treatment control, material management, and nonstormwater management BMPs will be implemented consistent with the latest edition of the California Stormwater Quality Association "Stormwater Best Management Practices Handbook," which is available at [www.cabmphandbooks.com](http://www.cabmphandbooks.com).

**HM-9 Vehicle and Equipment Cleaning**

Vehicles will be washed only at the approved area in the corporation yard or off site.

**HM-12 Hazardous Materials Management**

Measures will be implemented to ensure that hazardous materials are properly handled and the quality of water resources is protected by all reasonable means.

1. Prior to entering the work site, all field personnel will know how to respond when toxic materials are discovered.
2. The discharge of any hazardous or non-hazardous waste as defined in Division 2, Subdivision 1, Chapter 2 of the California Code of Regulations will be conducted in accordance with applicable State and federal regulations.
3. In the event of any hazardous material emergencies or spills, personnel will call the Chemical Emergencies/Spills Hotline at 1-800-510-5151.

**HM-13 Spill Prevention**

Prevent the accidental release of chemicals, fuels, lubricants, and non-storm drainage water.

1. Field personnel will be appropriately trained in spill prevention, hazardous material control, and clean-up of accidental spills.
2. No fueling, repair, cleaning, maintenance, or vehicle washing will be performed in a creek channel or in areas at the top of a channel bank or elsewhere that may flow into a creek channel.

**HM-14 Spill Kit Location**

Spill prevention kits appropriate to the hazard will always be in close proximity when using hazardous materials (e.g., crew trucks, golf maintenance building and other logical locations).

1. Prior to entering the work site, all field personnel will know the location of spill kits.
2. All field personnel will be advised of these locations and trained in their appropriate use.

**1.11 SCHEDULE AND COMPENSATION**

Full compensation for work involved in complying with the requirements of this Section shall be considered as included in the contract prices paid for other items of work involved and no additional time or compensation will be allowed.

**END OF SECTION**

**INSURANCE**

- A. At or before the date specified in Document 00200 (Instructions to Bidders), Contractor shall furnish to City satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below:
1. Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a standard Commercial General Liability Insurance policy ("Occurrence Form"). Such insurance shall provide for all operations and include independent contractors and contractual liability. The limits of such insurance shall not be coverage of less than \$1,000,000 each occurrence, \$2,000,000 general aggregate limit. The policies shall be endorsed to provide Broad Form Property Damage Coverage.
  2. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than \$1,000,000 each person Bodily Injury, \$1,000,000 each occurrence Bodily Injury, and \$1,000,000 each occurrence Property Damage.
  3. All-Risk Course of Construction Insurance **NOT APPLICABLE** for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws, water damage, flood, and damage caused by frost and freezing, in the amount of 100 percent of the completed value of the Work to be performed under this Contract. Deductible shall not exceed \$25,000. Each loss shall be borne by Contractor.
  4. Workers' Compensation Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount, \$1,000,000 each occurrence.
- B. All policies of insurance shall be placed with insurers acceptable to City. The insurance underwriter(s) must have an A. M. Best Company rating of A, 7 or better or otherwise acceptable to the City. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of City, warrant such increase. Contractor shall increase required insurance amounts upon direction by City.
- C. Required Endorsements: The policies required under paragraphs A.1, A.2 and A.3 of this Document shall be endorsed as follows:
1. Name the City of Cupertino, a Municipal Corporation of the State of California, its City Council, and their employees, representatives, consultants (including without limitation Consulting Engineer), and agents, and Engineers, as additional insureds, but only with respect to liability arising out of the activities of the named insured.
  2. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company's liability required under paragraphs A.1, A.2 and A.3 of this Document 00821.(Endorsement of Aggregate Limits of Insurance Per Project)
  3. Insurance shall be primary and no other insurance or self-insured retention carried or held by City shall be called upon to contribute to a loss covered by insurance for the named insured.
  4. Insurance shall contain a provision requiring the insurance carriers to waive their rights of subrogation against City and all additional insureds, as well as other insurance carriers for the Work.
- D. Certificates of insurance and endorsements shall be on forms provided in Document 00530, (Insurance Forms) have clearly typed thereon City Project Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to City of Cupertino (Attention: Director of Recreation & Community Services, City Hall, 10300 Torre Avenue, Cupertino CA 95014), 30 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Contractor shall maintain insurance in full force and effect during entire period of performance of Contract Documents, the following insurance in amounts not less than the amounts specified. Contractor shall keep insurance in force during warranty and guarantee periods, except that Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of

time. Upon City's request, Contractor shall submit to City, within 30 Days, copies of the actual insurance policies or renewals or replacements.

- E. Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, City may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.
- F. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from City under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from City, City may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If City is compelled to pay compensation, City may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse City.
- G. Nothing in this Document 00821 shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- H. Except that Subcontractors need to obtain coverage of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate limit of Comprehensive General Liability insurance, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work, and Contractor shall cause the Subcontractors to furnish proof thereof to City within ten Days of City's request.
- I. The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work ("Professional") – **NOT APPLICABLE**.
  - 1. Each Professional shall maintain the following insurance at its sole cost and expense:
    - a. Provided such insurance is customarily required by City when professionals engaged in the profession practiced by Professional directly contract with City, Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's work on the Project, in an amount not less than \$1,000,000 combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.
    - b. All insurance required by paragraphs A.1, A.2 and A.4 of this Document 00821. Professional shall satisfy all other provisions of paragraphs A, B, C, D, E and F of this Document 00821 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.
  - J. If required by City, Contractor shall obtain and maintain Contractor's Pollution Legal Liability Insurance in a form, with limits, and from an insuring entity reasonably satisfactory to City.

END OF DOCUMENT

**APPRENTICESHIP PROGRAM**

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

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

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

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

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

END OF DOCUMENT

# BLACKBERRY FARM GOLF COURSE MAINTENANCE TECHNICAL PROVISIONS

## 1. PUTTING GREENS

- 1.01 SCOPE:** Greens shall be maintained disease and weed free. Complete renovation of any green is not included in this maintenance project.
- 1.02 MOWING FREQUENCY:** Winter –six times per week.  
Spring/Summer/Fall – six times per week. Contractor to recycle grass trimmings.
- 1.03 CHANGING CUPS:** Contractor shall change the cup location daily year-round. Placement is to be at least 8 feet from edge of green on level surface. When requested, use the 1/3 rule – 1/3 of the pins back, 1/3 pins middle, 1/3 pins up.
- 1.04 HEIGHT OF CUT:** Is to be 0.135 of an inch
- 1.05 FERTILIZATION:** Contractor to collect soil samples yearly to determine recommended nutrients, rates of application and frequency of application, with the goal of a sustainable fertility program. Use organic fertilizers, i.e. Earthworks or approved equivalent. The City shall determine which of the greens are to be tested. Contractor to use Logan Laboratories or City approved equal for soils testing and recommendations. All fertilizer shall be applied in accordance with all applicable laws, codes, specifications and policies and at minimum rates that are consistent with healthy turf.
- 1.06 AERIFICATION/TOP DRESS/VERTI-CUTTING:** Contractor is to perform DryJect aerification or equal twice a year in March/April and September/October, and overseed with Pencross bentgrass in September. Perform a DryJect Maximus aerification or equal in July. Verti-cut greens monthly during the growing season. Top-dress with TD320 from TMT enterprises or City approved equal.
- 1.07 PESTICIDE APPLICATION:** All pesticide application shall be completed by a qualified person in accordance with all applicable laws, codes, specifications and policies. Greens to be maintained disease and weed free. Apply all chemicals sparingly. Applications shall be as per EPA regulations. Contractor must possess SDS (safety data sheets) for all materials. All posting and re-entry requirements must be followed. Contractor to submit monthly a written report of all pesticide applications. A recommendation by a licensed Pest Control Advisor (PCA) that is familiar with Blackberry Farm Golf Course and with its setting and protected natural resources is required for applications, and a licensed staffer with a current Qualified Applicator License (QAL) or is a Qualified Applicator Certificate holder (QAC) shall be on site and provide oversight during applications is required. All work shall adhere to all laws, regulations and applicable guidelines for all pesticide applications. Contractor may be required to obtain a Restricted Materials Use Permit and Notice of Intent prior to any applications.



- 1.08 PROTECTION OF CREEK AND PONDS:** No runoff from fertilizer, pesticide or chemical applications shall flow into creeks or ponds nor to drainage inlets that discharge to creeks or ponds.
- 1.09 INTERSEEDING:** Contractor shall interseed greens with City approved mix of creeping bentgrass two times per year, in the spring and fall at a rate of 2 lbs. per 1,000 sq. feet unless otherwise directed.

## **2. COLLAR MAINTENANCE**

- 2.01 MOWING FREQUENCY:** Twice weekly in spring/summer/fall and once a week in winter.
- 2.02 HEIGHT OF CUT:** to be ½ inch all year
- 2.03 FERTILIZATION:** to be fertilized the same as greens
- 2.04 WEED CONTROL:** to be applied the same as greens

## **3. TEE MAINTENANCE**

- 3.01 MOWING FREQUENCY:** Two to three times per week in spring/summer/fall and one to two times a week in winter.
- 3.02 HEIGHT OF CUT:** to be ½ inch all year
- 3.03 FERTILIZATION:** Contractor to collect at least one soil sample yearly to determine the recommended complete fertilizer to use. Contractor to use Logan Laboratories or City approved equal for soils testing and recommendations. Fertilizer to be applied four times a year in March, May, late August and October. The application rate shall be at the manufacturer's recommended rate. All fertilizer shall be applied in accordance with all applicable laws, codes, specification and policies and at minimum rates consistent with healthy turf. Special care shall be taken to prevent fertilizer or fertilizer-containing runoff from getting into creek areas or ponds.
- 3.04 AERIFICATION:** Contractor to aerate four times per year in May and October and as needed.
- 3.05 OVERSEEDING:** Contractor to overseed four times per year with perennial rye grass, at 8 lbs. per 1,000 sq. feet unless otherwise directed. Contractor to use seeder/slicer (verti-cutting) unit.
- 3.06 TEE MARKERS:** Contractor shall move and rotate daily. Keep 10 feet apart and 8 feet from back of tee (except where markers do not allow).
- 3.07 PERMANENT YARDAGE MARKERS:** Contractor to keep visible at all times.
- 3.08 WEED CONTROL:** Contractor to apply two broadleaf weed control in the spring and fall. Broadleaf weed control is for, but not limited to, English Daisy, clover, spurge and chickweed. Contractor to apply one Crabgrass control in spring. All weed controls shall be applied in accordance with all applicable laws, codes, specification and policies.
- 3.09 PROTECTION OF CREEK AND PONDS:** No runoff from fertilizer, pesticide or chemical applications shall flow into creek areas or ponds nor to drain inlets that discharge to creek areas or ponds.

- 3.10 SEED AND TOPSOIL TEES:** Contractor to place seeds and sand/organic compost mix on tees daily to repair divots.

#### **4. FAIRWAY MAINTENANCE**

- 4.01 MOWING FREQUENCY:** two to three times per week in growing season, and one to two times per week in winter
- 4.02 HEIGHT OF CUT:** ¾ inch all year
- 4.03 FERTILIZATION:** Contractor to collect one soil sample yearly to determine the recommended complete fertilizer to use. Contractor to use Logan Laboratories or City approved equal for soils testing and recommendations. Fertilizer to be applied four times a year in March, May, late August and October. The application rate shall be at the manufacturer's recommended rate. All fertilizer shall be applied in accordance with all applicable laws, codes, specifications and policies and at minimum rates consistent with healthy turf.
- 4.04 AERIFICATION: VERTI-CUTTING:** Contractor to aerate, verti-cut once per year in April/May.
- 4.05 OVERSEEDING:** Contractor shall overseed with Perennial Rye one time per year, 8 lbs. per 1,000 sq. feet unless otherwise directed. Use seeder/slicer for distribution. Perform spot-overseeding as needed with Perennial Rye.
- 4.06 WEED CONTROL:** Contractor to apply broadleaf weed control twice per year, in the spring and fall. Broadleaf weed control is for, but not limited to, English Daisy, clover, spurge and chickweed. Contractor to apply one Crabgrass control in spring. All weed controls shall be applied in accordance with all applicable laws, codes, specification and policies.
- 4.07 PROTECTION OF CREEK AND PONDS:** No runoff from chemical applications shall flow into creek areas or ponds. Contractor shall cover the drain inlets and drainage structures that discharge to the creek for one week after the application of any chemicals.

#### **5. ROUGH MAINTENANCE**

- 5.01 MOWING FREQUENCY:** twice per week all year
- 5.02 HEIGHT OF CUT:** 1 to 1 ½ inches all year
- 5.03 FERTILIZATION:** Same as Fairway Maintenance
- 5.04 AERIFICATION:** Same as Fairway Maintenance
- 5.05 WEED CONTROL:** Contractor to apply two broadleaf weed control in the spring and fall. Broadleaf weed control is for, but not limited to, English Daisy, clover, spurge and checkweed. Contractor to apply one Crabgrass control in spring. All weed controls shall be applied in accordance with all applicable, laws, codes, specification and policies.
- 5.06 PROTECTION OF CREEK AND PONDS:** No runoff from chemical applications shall flow into creeks or ponds.

## **6. EMPLOYEE RELATED ITEMS**

- 6.01 CODE OF CONDUCT:** Contractor's employees shall familiarize themselves with the standard code of conduct on the golf course, and with the City of Cupertino's Safety Manual, and must adhere to these requirements to the satisfaction of the City.
- 6.02 UNIFORMS:** Contractor shall provide uniforms to all personnel working at the golf course. Personnel shall wear uniforms at all time identifying them as golf course employees. The Contractor's logo may be on the uniform, however the primary label shall be "Blackberry Farm Golf Course".
- 6.03 GOLFER-RELATED ISSUES:** Contractor shall direct all problems to the pro shop staff, golf course supervisor, or operations supervisor assigned to the golf course.
- 6.04 MEETINGS:** Contractor to meet with City Staff bi-weekly to discuss overall maintenance operations and as needed.

## **7. EQUIPMENT AND EQUIPMENT STORAGE**

- 7.01 GREEN EQUIPMENT:** The City would like to encourage the Contractor to use Environmentally Friendly or Green equipment and supplies for this contract.
- 7.02 SCOPE:** All mowing equipment shall be on a regular preventive maintenance schedule for hydraulic and oil lines so as to minimize damage to turf and protect the creek and wildlife habitat from leaks. Hydraulic hoses shall be changed off site every six months.
- 7.03 GREENS:** Mowing equipment shall be 9 or more bladed, reel-type mower with a frequency of cut at a minimum of .25 at 3.6 mph.
- 7.04 TEES:** Mowing equipment shall be 7 or more bladed, reel-type mower with a frequency of cut at a minimum of .53 at 4.2 mph.
- 7.05 FAIRWAYS:** Mowing equipment shall be 6 or more bladed, reel-type mower with a frequency of cut at a minimum of .67 at 5.0 mph.
- 7.06 EQUIPMENT STORAGE:** Contractor will be allowed to be the primary user of the existing maintenance building and fenced in yard with access to the golf course adjacent to the 7<sup>th</sup> tee-box, and by the Blackberry Farm Park parking lot which serves the pools and picnic area. The building's outside dimensions are roughly 32.5 ft. by 56.5 ft. (approx. 1,800 S.F.) and the fenced yard measures roughly 43 ft. by 49 ft. (approx.. 2,100 S.F.). The Contractor shall have use of the maintenance building. The City reserves the right to access, share or use the facility in a manner that does not prevent Contractor's operations.
- 7.07 EQUIPMENT:** Equipment shall be stored in an orderly and consistent manner. Equipment shall be cleaned prior to parking. The Contractor shall perform vehicle or equipment cleaning, with water, only in the designated washoff station located in the maintenance building yard. The City's crews

shall also have use of the washoff station. The screen shall be cleaned after every use. Contractor to observe all legal requirements and safety regulations according to CAL-OSHA.

- 7.08 CONTRACTOR PARKING:** Contractor and staff may use the Golf Course Maintenance Building site for parking year round. Subject to City's discretion, Contractor may use adjacent parking in Blackberry Farm Park. City reserves the right to deny use of this area when the park is being used during its operating period for the pools and picnic grounds, currently from May to September, or during any planned events, or for City's convenience. If parking is restricted the Contractor may be allowed to park at the clubhouse. The City may also allow temporary parking of equipment in the parking lot with prior approval from the City and at the Contractor's own risk.

## **8. CORPORATION YARD AND FUEL STATION**

- 8.01 YARD:** The yard is located at the maintenance building area. The area is fenced in. Contractor to maintain the yard in a clean, orderly, safe condition at all times and conforming to all applicable laws and regulations.
- 8.02 FUEL STATIONS:** Contractor shall supply all fuel and storage equipment and comply with all applicable laws and regulations including signage requirements. The Contractor will be required to determine their own safe and appropriate operating procedures. The City encourages the Contractor to minimize the storage of fuel at the site. If the City determines that fuel storage on site is excessive the Contractor shall be required to reduce the storage amount. The Contractor is encouraged to use electric or battery-operated equipment to the extent feasible.
- 8.03 SPILLED FUEL:** Contractor shall immediately clean up spills using proper techniques and shall comply with all applicable laws, codes, specifications, policies and regulations.

## **9. PESTICIDE STORAGE – ALSO SEE GENERAL CONDITIONS, “STORM WATER POLLUTION CONTROLS” Section**

- 9.01 PESTICIDE STORAGE:** Contractor may use the maintenance building for the storage of pesticide and other materials and equipment, provided all applicable laws, codes, specifications, policies and regulations are followed. The Contractor shall determine their own safe and appropriate operating procedures and shall comply with all applicable laws, codes, specifications, policies and regulations. Contractor to keep storage in a neat orderly fashion. Contractor to keep storage locked at all times. Contractor to supply proper identification with required signage. Contractor to properly record methods to be used. Only employees with a current qualified applicator license or qualified applicator certificate shall be permitted access to the facility. Contractor shall observe all legal requirements and safety regulations in accordance with CAL-OSHA.

- 9.02 HAZARDOUS MATERIAL BUSINESS PLAN:** If Contractor uses the maintenance building the Contractor must submit a completed Hazardous Material Business Plan to the Santa Clara County Fire Department to obtain a Hazardous Materials Storage Permit. The Permit must be obtained and a copy provided to the City within 90 days of start of work or use of the storage building.

## **10. PARKING LOT AT GOLF COURSE ENTRANCE**

- 10.01 SWEEPING:** Contractor shall sweep monthly. Manually using a blower is acceptable during the hours of 7:00 am to 8:00 pm on week days and 9:00 am to 6:00 pm on weekend, and in accordance with the City's noise ordinance.
- 10.02 LOOSE TRASH AND GARBAGE CANS:** Contractor shall pick up trash and check area daily.
- 10.03 BROKEN GLASS/BOTTLES:** Contractor shall pick up and dispose of broken glass or similar potentially harmful materials immediately.

## **11. CLUBHOUSE & MAINTENANCE BUILDING**

- 11.01 REST ROOMS AT MAINTENANCE BUILDING:** Public restrooms for golfers exist on the golf-facing side of the golf maintenance building. The public rest rooms will be cleaned and maintained by the City or City's designee.
- 11.02 PATIO:** Contractor shall sweep daily.
- 11.03 RECYCLED CARDBOARD CONTAINERS:** Shall be emptied at least once per week.

## **12. ENTRY AREA/CLUBHOUSE GROUNDS**

- 12.01 FLOWER BEDS:** Contractor shall weed, mulch, water and replenish as needed.
- 12.02 TRASH:** Contractor shall pick up daily.
- 12.03 FOOT BRUSHES:** Contractor shall clean and check weekly and replace when worn.
- 12.04 WALKWAYS:** Contractor shall sweep daily when weather permits.
- 12.05 TRASH AND CIGARETTE CANS:** Contractor shall empty cans daily and comply with City's recycling standards.
- 12.06 LEAKS FROM GOLF CARTS:** Contractor shall clean immediately.
- 12.07 LANDSCAPE SHRUBBERY:** Contractor shall trim monthly and as needed.
- 12.08 ANNUAL PLANTINGS:** Contractor shall remove and re-plant minimum 2 times per year the two planter boxes located at the clubhouse. The planter box on number one tee measuring roughly 4.5 ft. by 35.5 ft. (160 S.F.) and the planter box to the left of the building along the restroom walkway measuring roughly 8 ft. by 34 ft. (272 S.F.).

- 12.09 DRIVING RANGE:** Contractor shall cut grass weekly and fertilize and aerate the same as fairways.
- 12.10 WEED CONTROL (NON-SELECTIVE):** Contractor shall use mechanical method of trimming or removing undesirable vegetation in tree wells, perimeter and interior fence lines, barriers, railroad ties, delineators, and along edges of golf play areas that are along the creek or associated native planting areas.
- 12.11 LITTER:** Contractor shall remove daily.
- 12.12 TRASH AND DEBRIS (FROM MAINTENANCE):** Contractor shall remove as it occurs and dispose of it in a safe and legal manner.
- 12.13 SOIL, WATER SAMPLES:** Contractor shall take samples annually or more often if unusual growth habits develop.
- 12.14 RODENT CONTROL:** Contractor shall begin immediate eradication action following local, state and federal guidelines when gopher or ground squirrel activity occurs. Contractor is not allowed to use rodenticides nor any chemicals to control rodents. Acceptable methods may include carbon dioxide use, trapping, exclusion, or burrow sealing/removal, or using other techniques as acceptable to City.
- 12.15 SAND TRAPS:** Complete renovation of any sand trap is not included in this maintenance project. Contractor shall rake daily. Contractor shall keep sand at 4 inches in depth minimum and keep clean of all weeds. When using power rake, stay about one foot from edge of trap. When hand-raking edge of trap, put sand inward on low side and pull outward on high side. Contractor to edge traps monthly and as needed. Do not drag sand out of trap when exiting trap with power rake.
- 12.16 TREES:** Any tree removal or tree replacement must be approved by the City and any expenditures incurred will be outside the standard scope of work. Contractor shall keep all trees trimmed at least 6 feet from the ground to prevent damage to golf cart tops and maintenance equipment, except for trees and shrubs along the creek which shall only be trimmed as acceptable to the City Naturalist. Contractor shall maintain trees in a safe, healthy, and aesthetically pleasing condition at all times. Contractor shall mow, weed and/or mulch tree wells as needed. Contractors shall immediately remove any broken tree limbs. Downed brush shall be removed as soon as possible. All trimmings or debris shall be removed from the course, unless they are chipped, and used for mulch on site. Contractor shall not be responsible for removal of dead or fallen trees; such removal shall be at the City's expense unless it is determined that the condition was caused by the Contractor's negligence.
- 12.17 USGA GREEN SECTION VISIT:** Contractor shall have a USGA staff agronomist visit the course yearly on the following schedule: first year in the spring, second year in the summer, third year in the fall, no winter visits. Contractor shall act on all appropriate recommendations that result from these visits.
- 12.18 LEAF PICKUP:** Contractor shall remove leaves daily or as necessary.

**12.19 VANDALISM/GRAFFITI:** Contractor shall correct vandalism immediately and remove graffiti within 24 hours.

### **13. SAFETY**

**13.01 SAFETY:** Hardhats, gloves, and safety glasses will be worn as required, unless excused by a supervisor in writing. Hardhats must be worn when in or on an open vehicle on the golf course. Contractor shall report accidents immediately. If an accident occurs on a weekend, an operations supervisor must be notified. Contractor shall observe and follow label instructions on chemical containers as to their use. Contractor shall wear proper attire when working with pesticides. Contractor shall correct all unsafe conditions immediately, or if immediate correction is not feasible, immediately report them to a supervisor. Contractor shall use safety lights on equipment when golfers are present and as needed for safety or for code compliance. Contractor shall clean equipment when finished and check for missing and damaged parts.

### **14. OTHER AREAS**

**14.01 TEE MARKERS:** Contractor shall have two sets each hole. Missing or broken markers shall be replaced immediately.

**14.02 BENCHES/TEE SIGNS:** Contractor shall immediately remove any damaged bench, and notify supervisor so that City can replace it. Any damaged tee sign shall be removed as soon as possible, and notify supervisor so that City can replace it.

**14.03 YARD MARKERS:** Contractor shall replace as needed any yard markers.

**14.04 GREENS FLAGS, POLE, CUPS:** Contractor shall replace flags, poles and cups when they are discolored, frayed or damaged in any way.

**14.05 BALL WASHERS:** Contractor shall check for water/soap daily. Contractor shall replace tee towels monthly or more often if towel is frayed, discolored, or aesthetically unpleasing.

**14.06 SAND TRAP RAKES:** Contractor shall keep two rakes per trap or more as needed, and replace any missing or broken rake immediately.

**14.07 OUT-OF-BOUNDS/HAZARD STAKES:** Contractor shall replace white out-of-bounds stakes immediately if missing or broken.

**14.08 OVERSEEDING:** Contractor shall spot-overseed with Perennial Rye when needed.

**14.09 PONDS:** Contractor shall keep the ponds free from algae and excessive growth of plant material.

**14.10 BRIDGE:** Contractor shall inspect bridge daily for safe conditions and repair structures immediately when necessary.

**14.11 FOOT GOLF:** Contractor shall maintain 9 hole foot golf course, with all tee markers, holes, cups, flagpoles, and flags. Edging around the cups shall be done weekly.

## **15. IRRIGATION**

- 15.01 SCOPE:** Irrigation system shall be maintained in a manner to provide proper watering. Any major irrigation system repairs or improvements are not included in this maintenance project.
- 15.02 MAINTENANCE:** Contractor shall maintain system, including lateral lines, sprinkler heads, and controllers in good operating repair, functioning properly, and conforming to related laws, codes and regulations. No valves or water main repairs are included in this maintenance project. Contractor shall notify the City immediately when valve or water main repairs are necessary for proper operation.
- 15.03 FREQUENCY:** Contractor is to irrigate as required to maintain adequate moisture for growth rate and appearance. Contractor is to hand-water as needed any and all portions of the course that do not receive adequate water from the irrigation system.
- 15.04 TESTING FOR ADEQUATE SOIL MOISTURE:** Contractor shall determine by visual observation, plant resiliency, turgidity, examining cores removed by soil probe, and moisture sensor devices.
- 15.05 WATER CONSERVATION:** Irrigation controllers shall be programmed to maintain course appearance and health of vegetation while maximizing water conservation.
- 15.06 WIND PROBLEMS:** In areas where wind creates problems of spraying onto private property or road rights of way, operation shall occur during period of lowest wind velocity.
- 15.07 MONITORING:** Contractor shall make corrections for coverage, adjustment, clogging of lines, and removal of obstacles, tilting of heads, and management of plant materials that obstruct the spray as they occur.
- 15.08 SYSTEM CHECK:** Contractor shall check the system daily during months of operation.
- 15.09 PUMPING PLANT:** Pumping plant shall be maintained the City.
- 15.10 WATER COST:** Water costs shall be paid for by the City.

## **16. RECYCLING OF VEGETATION**

- 16.01 RECYCLING REQUIRED:** Contractor shall recycle all vegetative material generated. No clippings may be dispersed in the rough or on the fairways. Clippings may be recycled in out of play areas in amounts and locations approved by the City. Clippings may not be recycled on the creek bank or within 8 feet of the creek edge or in a manner that might result in clippings getting into the creek channel at any time. If build up of pine needles, leaves and grass clippings become excessive in these areas the Contractor will be required to remove them and place them in the vegetation recycling containers provided by the City.



**16.02 RECYCLING FACILITIES:** The City shall provide vegetation recycling containers which will consist of totes or bins as required by the quantity of material generated from the maintenance operations.

## **17. WILDLIFE CONSIDERATIONS**

Contractor is to note that a number of federally- and state-protected wildlife species inhabit the Stevens Creek corridor and portions of the golf course. Among the species are steelhead fish, turtles, woodrats, various birds of prey such as hawks, owls and white-tailed kites, and various migratory birds and songbirds. These animals and their habitat are protected by various federal and state regulations. Those regulations affect activities that could affect wildlife directly or indirectly, including actions on the golf course that could affect the creek and its water quality. Such actions include fertilizer use, pesticide use, irrigation practices, operation of the golf course ponds, vehicle washing, and other procedures.

Contractor shall meet with City staff and representatives annually to review maintenance activities relative to these considerations. Contractor is encouraged meet with City representatives more frequently as needed to ensure compliance. Further considerations are noted below.

## **18. TERRESTRIAL WILDLIFE**

**VEGETATION TRIMMING AND REMOVAL:** No vegetation along the creek edge shall be trimmed or removed from February 1 to August 31, unless it has been reviewed for presence of nests and protected wildlife by a biologist or qualified professional or the City Naturalist.

**TREE REMOVAL:** Certain trees are protected by City ordinance. No tree shall be removed or significantly pruned without advance approval by the City representative.

**BIRD BREEDING SEASON:** Breeding season for raptors, birds of prey such as hawks and owls, is normally from February 1 to August 31, with highest activity usually from early or mid March onward. Most such birds and their nests and breeding are protected by law. Routine golf course operations may proceed during breeding season. However, during this time contractor shall endeavor to reduce disturbing activities, such as loud noises or vibration, within 250 feet of a raptor nest site and within 400 feet of a white-tailed kite nest site. Songbird nests are generally protected within a 100 foot radius.

**RODENTICIDE USE:** Use of any and all rodenticides [to poison squirrels, gophers, mice, rats] or chemicals is banned, unless authorized in advance in writing by the City.

**LIGHTING:** Contractor is to minimize use of nighttime lighting, especially in the vicinity of the creek. Contractor is to operate the golf maintenance facility in a manner that minimizes use of outdoor lighting to the extent feasible. Lights shall only be used

when workers are present, unless the City provides advance authorization in writing. This stricture applies to outdoor lighting of the maintenance yard.

EMISSIONS: Contractor is to minimize the use of exhaust- and emission-producing equipment to the extent compatible with performance of the work. Contractor shall favor the use of equipment powered by electrical, batteries or hand rather than diesel, gas or oil, as feasible.

**WILDLIFE REPORTING:**

Contractor shall report any observations of the following to the City representative within 1 working day:

- active raptor nests
- turtles
- woodrats [potentially San Francisco dusky-footed woodrat]
- frogs [potentially California red-legged frog]
- salamanders [potentially California tiger salamander]
- other potentially protected wildlife

**19. AQUATIC WILDLIFE**

Federally-threatened steelhead inhabit the section of Stevens Creek that is adjacent to the golf course, year round. This fish species is highly protected. Their survival depends on clean cool water, free of harmful levels of fertilizers, pesticides, storm water runoff pollutants, and organic waste. The principal methods to achieve this are minimizing total use of these contaminants, restricting the type of inputs, and having an acceptable method of application via an Integrated Pest Management Plan (IPM). The City has adopted such a plan as discussed elsewhere in this document.

Contractor is strongly encouraged to operate in conformance with Pilot Salmon Safe Certification Standards for Golf Courses, latest version (March 2014, draft 1.3) available at [www.salmonsafe.org](http://www.salmonsafe.org).

Due to adverse impacts on fish and aquatic wildlife, use of the following pesticides is not allowed.

## PESTICIDES USED IN URBAN APPLICATIONS THAT POSE HIGH RISK TO SALMON AND AQUATIC LIFE

|                             |                      |               |
|-----------------------------|----------------------|---------------|
| 1,3-dichloropropene         | Disulfoton           | Prometryn     |
| 2,4-D                       | Diuron               | Propargite    |
| Abmectin                    | Esfenvalerate        | Propiconazole |
| Acephate                    | Ethoprop             | Rimon         |
| Altacor                     | Extoxazole Technical | Quintozone    |
| Atrazine                    | Fenamiphos           | Rimon         |
| Bensulide                   | Fenpyroximate        | Simazine      |
| Bentazon                    | Fenbutatin-Oxide     | Spinosyn      |
| Bifenazate                  | Folpet               | Tebuthiuron   |
| Bifenthrin                  | Imidacloprid         | Thiram        |
| Bromoxynil                  | Iprodione            | Triclopyr     |
| Carbaryl                    | Linuron              | Trifluralin   |
| Carbofuran                  | Malathion            |               |
| Carfentrazone-ethyl         | Mancozeb             |               |
| Chlorothalonil              | Maneb                |               |
| Chlorpyrifos                | Metolachlor          |               |
| Copper Sulfate <sup>1</sup> | Metribuzin           |               |
| Cyhalothrin                 | Naled                |               |
| Cypermethrin                | Norflurazon          |               |
| Diazinon                    | Oryzalin             |               |
| Dicamba                     | Oxyfluorfen          |               |
| Dichlobenil                 | Paraquat Dichloride  |               |
| Diclofop-methyl             | Pendimethalin        |               |
| Diifubenzuron               | Permethrin           |               |
| Dimethoate                  | Phosmet              |               |

<sup>1</sup> Salmon-Safe restrictions apply to any copper-containing pesticide including copper hydroxide, copper ammonium hydroxide, copper carbonate, and copper oxide, and others.

If use of any of these pesticides is desired, Contractor must submit written documentation to City to demonstrate a clear need for use of the pesticide, that no safer alternatives exist, and that the method of application (such as timing, location, and amount used) represents a negligible risk to water quality and fish habitat. Contractor must secure authorization in advance from City and any involved regulators including Resource Agencies that use of the pesticide may proceed.

Note that some of these pesticides are included on the San Francisco Reduced Risk Pesticide List ("SF List"). They are hereby deleted from the SF List since they are not suitable for use near creeks and include but are not limited to:

- Triclopyr

These pesticides are not to be used on the golf course unless written authorization is secured in advance.

## **20. WATER QUALITY CONSIDERATIONS: Protection of creek & ponds**

**RUNOFF:** No runoff from any applications of chemicals, pesticides or fertilizer shall flow into creeks or ponds, including runoff from allowable products. No runoff other than clean rainwater shall flow into the creek. Contractor shall consider weather conditions and watering regimes in order to schedule application of fertilizer, pesticides and chemicals in a manner that prevents runoff to creeks or ponds. Contractor shall operate irrigation system and watering activities in a manner that prevents irrigation runoff as well.

**EQUIPMENT WASHING:** All equipment shall be washed within the equipment washoff area in the golf maintenance yard, or in an equivalent offsite facility that filters wash water and is connected to the sanitary sewer system. Screens shall be cleaned of grass clippings and other material after each use. No washing is permitted elsewhere.

**POND MAINTENANCE:** Ponds shall be kept free of excessive vegetation. Vegetation removal shall be done with hand or mechanical means. Such removal shall be timed to avoid wildlife breeding seasons in consultation with the City. Timing will ordinarily be September to January, or potentially as late as mid March if nesting and protected wildlife are not present.

A pond outlet/overflow pipe within the lower pond provides an emergency discharge to the creek. This outlet pipe must be capped at all times with a tight, sturdy, secure, 3/32" square mesh or tighter screen that is acceptable to City. If slotted the maximum opening width is 1/16". Pond water level shall be maintained sufficiently below the outlet pipe elevation such that NO POND WATER ENTERS THE OUTLET nor flows to the creek. Contractor shall check the screen to ensure that it is tight, intact and clear at least monthly and shall maintain the mesh in a clear clean condition.

When ponds are in operation, ponds shall be maintained with adequate water level to maintain habitat for existing fish and wildlife populations, unless the City authorizes otherwise. Ponds shall be operated in a manner that prevents algae growth. Avoid over fertilization that contributes to algae growth.