



**PUBLIC WORKS DEPARTMENT
10300 TORRE AVENUE
CUPERTINO, CALIFORNIA 95014**

PROJECT MANUAL

FOR THE

Wilson Park Community Garden

Bid Date:

November 29, 2:00 p.m.

Project Number: 2020-01.1

**PROJECT MANUAL FOR
Wilson Park Community Garden
PROJECT NO. 2020-01.1**

APPROVED BY:

A handwritten signature in black ink, reading "Matt Morley", written over a horizontal line.

**Matt Morley
Director of Public Works**

PROJECT DIRECTORY

Project Name: **Wilson Park Community Garden**

Project Number: **2020-01.1**

Location: Wilson Park, Cupertino, CA

City Representative:

City of Cupertino

John Raaymakers, PE
Public Works Department
10300 Torre Avenue
Cupertino, CA 95014
PH: (408) 777-3100
e-mail: johnr@cupertino.org

Address for Stop Notices:

City of Cupertino

John Raaymakers, PE
Public Works Department
10300 Torre Avenue
Cupertino, CA 95014
PH: (408) 777-3100
e-mail: johnr@cupertino.org

Engineer of Record:

Callander Associates

Marie Mai
2025 Gateway Place, Suite 285
San Jose, CA 95110
PH: (408) 275-0565

SEALS PAGE

Wilson Park Community Gardens Project No. 2020-01.1

The Technical Specifications and Plans have been prepared by or under the direction of the following person(s).



Marie Mai
Date: 4/29/22

MARIE MAI

Callander Associates Landscape Architecture, Inc.

Licensed Landscape Architect #5369

Expiration Date: December 31, 2023

TABLE OF CONTENTS

Notice Inviting Bids	1
Instructions to Bidders	3
Bid Proposal.....	9
Bid Schedule	12
Subcontractor List.....	14
Noncollusion Declaration	15
Bid Bond.....	16
Bidder's Questionnaire	18
Contract	21
Payment Bond.....	25
Performance Bond	27
General Conditions	29
Article 1 - Definitions.....	29
Definitions.....	29
Article 2 - Roles and Responsibilities	32
2.1 City	32
2.2 Contractor.....	32
2.3 Subcontractors	35
2.4 Coordination of Work.....	35
2.5 Submittals.....	36
2.6 Shop Drawings	37
Article 3 - Contract Documents.....	37
3.1 Interpretation of Contract Documents	37
3.2 Order of Precedence	38
3.3 Caltrans Standard Specifications	39
3.4 For Reference Only	39
3.5 Current Versions	40
3.6 Conformed Copies	40
Article 4 - Bonds, Indemnity, and Insurance	40
4.1 Payment and Performance Bonds	40
4.2 Indemnity	40
4.3 Insurance.....	41
Article 5 - Contract Time	43
5.1 Time is of the Essence	43
5.2 Schedule Requirements	43
5.3 Delay and Extensions of Contract Time.....	45
5.4 Liquidated Damages	48
Article 6 - Contract Modification	49
6.1 Contract Modification.....	49
6.2 Contractor Change Order Requests	50
6.3 Adjustments to Contract Price.....	51
6.4 Unilateral Change Order	52
6.5 Non-Compliance Deemed Waiver.....	52
Article 7 - General Construction Provisions	52
7.1 Permits, Fees, Business License, and Taxes	52
7.2 Temporary Facilities	52
7.3 Noninterference and Site Management	53
7.4 Signs.....	53
7.5 Project Site and Nearby Property Protections.	53
7.6 Materials and Equipment.....	55
7.7 Substitutions	55
7.8 Testing and Inspection	56

7.9	Project Site Conditions and Maintenance	57
7.10	Instructions and Manuals	58
7.11	As-built Drawings	58
7.12	Existing Utilities	59
7.13	Notice of Excavation.....	59
7.14	Trenching and Excavations of Four Feet or More.....	60
7.15	Trenching of Five Feet or More	60
7.16	New Utility Connections	60
7.17	Lines and Grades.	60
7.18	Historic or Archeological Items.....	61
7.19	Environmental Control.....	61
7.20	Noise Control.....	61
7.21	Mined Materials.	61
Article 8	- Payment	62
8.1	Schedule of Values	62
8.2	Progress Payments	62
8.3	Adjustment of Payment Application	62
8.4	Early Occupancy.	63
8.5	Retention	63
8.6	Payment to Subcontractors and Suppliers.....	64
8.7	Final Payment	64
8.8	Release of Claims	65
8.9	Warranty of Title	65
Article 9	- Labor Provisions	65
9.1	Discrimination Prohibited.....	65
9.2	Labor Code Requirements	65
9.3	Prevailing Wages	65
9.4	Payroll Records	66
9.5	Labor Compliance	66
Article 10	- Safety Provisions	66
10.1	Safety Precautions and Programs	66
10.2	Hazardous Materials	67
10.3	Material Safety	67
10.4	Hazardous Condition.....	67
10.5	Emergencies	68
Article 11	- Completion and Warranty Provisions	68
11.1	Final Completion	68
11.2	Warranty	69
11.3	Use Prior to Final Completion	70
11.4	Substantial Completion	70
Article 12	- Dispute Resolution	70
12.1	Claims.....	70
12.2	Claims Submission.....	71
12.3	City's Response	72
12.4	Meet and Confer.....	73
12.5	Mediation and Government Code Claims	73
12.6	Tort Claims	74
12.7	Arbitration	74
12.8	Burden of Proof and Limitations.....	74
12.9	Legal Proceedings.....	74
12.10	Other Disputes	74
Article 13	- Suspension and Termination.....	74
13.1	Suspension for Cause	74
13.2	Suspension for Convenience	75
13.3	Termination for Default.....	75
13.4	Termination for Convenience	76

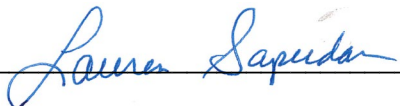
13.5	Actions Upon Termination for Default or Convenience	77
Article 14 - Miscellaneous Provisions		78
14.1	Assignment of Unfair Business Practice Claims	78
14.2	Provisions Deemed Inserted	78
14.3	Waiver	78
14.4	Titles, Headings, and Groupings	78
14.5	Statutory and Regulatory References	78
14.6	Survival.....	78
Special Conditions		80
Definition of Bid Items		86
Technical Specifications		94

Notice Inviting Bids

1. **Bid Submission.** City of Cupertino ("City") will accept electronically submitted bids for its Wilson Park Community Gardens Project ("Project"), by or before November 29, 2022, at 2:00 p.m., via electronic submission to the City's "Business Opportunities" online portal in the manner set forth in Section 1 of the Instructions to Bidders, at which time the bids will be opened by the City.
2. **Project Information.**
 - 2.1 **Location and Description.** The Project is located at in Wilson Park, at 19784 Wintergreen Drive, Cupertino, CA, and is described as follows:

Construction of a community garden to include approximately 15 planting beds including fencing, pavement surfaces, irrigation, and associated improvements.
 - 2.2 **Time for Final Completion.** The Project must be fully completed within 80 calendar days from the start date set forth in the Notice to Proceed. City anticipates that the Work will begin on or about January 30, 2023, but the anticipated start date is provided solely for convenience and is neither certain nor binding.
 - 2.3 **Estimated Cost.** The estimated construction cost is \$290,000.
3. **License and Registration Requirements.**
 - 3.1 **License.** This Project requires a valid California contractor's license for the following classifications: Classification A, General Engineering, or C-27, Landscaping Contractor.
 - 3.2 **DIR Registration.** City may not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder is registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
4. **Contract Documents.** The plans, specifications, bid forms and contract documents for the Project, and any addenda thereto ("Contract Documents") may be downloaded from City's website located at: <https://apps.cupertino.org/bidmanagement/index.aspx>. A printed copy of the Contract Documents is not available.
5. **Bid Security.** Each bidder must submit bid security equal to ten percent of the maximum bid amount, in the form of a cashier's or certified check made payable to City, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents, in the manner set forth in Section 4 of the Instructions to Bidders. The bid security must guarantee that within ten days after City issues the Notice of Potential Award, the successful bidder will execute the Contract and submit the payment and performance bonds, insurance certificates and endorsements, and any other submittals required by the Contract Documents and as specified in the Notice of Potential Award.
6. **Prevailing Wage Requirements.**
 - 6.1 **General.** Pursuant to California Labor Code § 1720 et seq., this Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.

- 6.2 Rates.** These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.
- 6.3 Compliance.** The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.
- 7. Performance and Payment Bonds.** The successful bidder will be required to provide performance and payment bonds, each for 100% of the Contract Price, as further specified in the Contract Documents.
- 8. Substitution of Securities.** Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code § 22300.
- 9. Subcontractor List.** Each Subcontractor must be registered with the DIR to perform work on public projects. Each bidder must submit a completed Subcontractor List form with its Bid Proposal, including the name, location of the place of business, California contractor license number, DIR registration number, and percentage of the Work to be performed (based on the base bid price) for each Subcontractor that will perform Work or service or fabricate or install Work for the prime contractor in excess of one-half of 1% of the bid price, using the Subcontractor List form included with the Contract Documents.
- 10. Instructions to Bidders.** All bidders should carefully review the Instructions to Bidders for more detailed information before submitting a Bid Proposal. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, as defined therein, including this Notice Inviting Bids.

By:  Date: 11/13/2022
Lauren Sapudar, Deputy City Clerk

Publication Date: November 11, 2022

END OF NOTICE INVITING BIDS

Instructions to Bidders

Each Bid Proposal submitted to the City of Cupertino ("City") for its Wilson Park Community Garden Project ("Project") must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

- 1.1 General.** Each Bid Proposal must be signed and submitted to City, using the form provided in the Contract Documents, by or before the date and time set forth in Section 1 of the Notice Inviting Bids, or as amended by subsequent addendum, via electronic submission only as specified below in Section 1.2. Faxed, hand-delivered, mailed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will not be considered. City reserves the right to postpone the date or time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all labor, material, supplies, and equipment and all other direct or indirect costs such as applicable taxes, insurance and overhead.
- 1.2 Electronic Submission.** The Bid Proposal and all required forms and attachments must be submitted in PDF format on the City's "Business Opportunities" portal at <https://apps.cupertino.org/bidmanagement/index.aspx>. To submit a bid, (1) select the folder icon in the "Actions" column for the Project; (2) select the "Electronic Submission" tab; (3) when the log-in screen appears, enter the log-in credentials used to access the Contract Documents and/or create an account, as appropriate; (4) after logging in, carefully follow all instructions for electronic submission of the Bid Proposal and all required forms and attachments. Each bidder should familiarize itself with the City's "Business Opportunities" portal before the bid deadline. Electronic submission may take more time than anticipated. Each bidder should plan accordingly and afford itself ample time to upload its bid. Bids that are in the process of uploading but are not completely uploaded by the bid deadline will be automatically rejected by the portal. The portal will not allow submission after the bid deadline. On the next Working Day following the bid opening, the City will post the bid results to <https://apps.cupertino.org/bidmanagement/index.aspx>.
- 1.3 DIR Registration.** Subject to limited legal exceptions for joint venture bids and federally-funded projects, City may not accept a Bid Proposal from a bidder without proof that the bidder is registered with the DIR to perform public work under Labor Code § 1725.5. If City is unable to confirm that the bidder is currently registered with the DIR, City may disqualify the bidder without opening its bid. (Labor Code §§ 1725.5 and 1771.1(a).)

- 2. Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed legibly using the Bid Proposal form included with the Contract Documents. The Bid Proposal form must be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder's authorized representative. A Bid Proposal submitted with exceptions or terms such as "negotiable," "will negotiate," or similar, will be considered nonresponsive. Each Bid Proposal must be accompanied by a completed Subcontractor List and Non-Collusion Declaration using the forms included with the Contract Documents, a PDF copy of the bid security, and any additional forms required by the Notice Inviting Bids or Instructions to Bidders. In addition to

submitting a PDF copy of the bid security, each bidder must also send the original form of bid security to the City, as set forth in Section 4, below.

3. **Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code § 313.
4. **Bid Security.** Each bid must be guaranteed by bid security of ten percent of the maximum bid amount, in the form of a cashier's or certified check made payable to the City, or bid bond using the form included in the Contract Documents and executed by a surety licensed to do business in the State of California.
 - 4.1 **Form of Security and Submission.** In addition to submitting a PDF copy of the bid security, the wet-inked original bid bond, cashier's or certified check, must be sent to the City via U.S. Mail or a reliable overnight delivery service in a sealed envelope addressed to City of Cupertino, Office of the City Clerk, 10300 Torre Avenue, Cupertino, CA 95014 and clearly labeled with the bidder's legal name and address, the Project title, and date and time of the bid deadline. The envelope containing the original form of bid security must be postmarked or otherwise dated to show that it was submitted to the United States Postal Service or overnight delivery service by or before the date of the bid deadline.
 - 4.2 **Bid Guarantee.** The bid security must guarantee that, within ten days after issuance of the Notice of Potential Award, the bidder will: execute and submit the enclosed Contract for the bid price; submit payment and performance bonds for 100% of the maximum Contract Price; and submit the insurance certificates and endorsements and any other submittals, if any, required by the Contract Documents or the Notice of Potential Award. A Bid Proposal may not be withdrawn for a period of 60 days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code § 5100 et seq.
5. **Requests for Information.** Questions or requests for clarifications regarding the Project, the bid procedures, or any of the Contract Documents must be submitted in writing to John Raaymakers, Project Manager, at johnr@cupertino.org. Oral responses are not authorized and are not binding on the City. Bidders should submit any such written inquiries at least five Working Days before the scheduled bid opening. Questions received any later might not be addressed before the bid deadline. An interpretation or clarification by City in response to a written inquiry will be issued in an addendum.
6. **Pre-Bid Investigation.**
 - 6.1 **General.** Each bidder is solely responsible at its sole expense for diligent and thorough review of the Contract Documents, examination of the Project site, and reasonable and prudent inquiry concerning known and potential site and area conditions prior to submitting a Bid Proposal. Each bidder is responsible for knowledge of conditions and requirements which reasonable review and investigation would have disclosed. However, except for any areas that are open to the public at large, bidders may not enter property owned or leased by the City or the Project site without prior written authorization from City.
 - 6.2 **Document Review.** Each bidder is responsible for review of the Contract Documents and any informational documents provided "For Reference Only," e.g.,

as-builts, technical reports, test data, and the like. A bidder is responsible for notifying City of any errors, omissions, inconsistencies, or conflicts it discovers in the Contract Documents, acting solely in its capacity as a contractor and subject to the limitations of Public Contract Code § 1104. Notification of any such errors, omissions, inconsistencies, or conflicts must be submitted in writing to the City no later than five Working Days before the scheduled bid opening. (See Section 5, above.) City expressly disclaims responsibility for assumptions a bidder might draw from the presence or absence of information provided by City.

6.3 Project Site. Questions regarding the availability of soil test data, water table elevations, and the like should be submitted to the City in writing, as specified in Section 5, above. Any subsurface exploration at the Project site must be done at the bidder's expense, but only with prior written authorization from City. All soil data and analyses available for inspection or provided in the Contract Documents apply only to the test hole locations. Any water table elevation indicated by a soil test report existed on the date the test hole was drilled. The bidder is responsible for determining and allowing for any differing soil or water table conditions during construction. Because groundwater levels may fluctuate, difference(s) in elevation between ground water shown in soil boring logs and ground water actually encountered during Project construction will not be considered changed Project site conditions. Actual locations and depths must be determined by bidder's field investigation. The bidder may request access to underlying or background information on the Project site in City's possession that is necessary for the bidder to form its own conclusions, including, if available, record drawings or other documents indicating the location of subsurface lines, utilities, or other structures.

6.4 Utility Company Standards. The Project must be completed in a manner that satisfies the standards and requirements of any affected utility companies or agencies (collectively, "utility owners"). The successful bidder may be required by the third party utility owners to provide detailed plans prepared by a California registered civil engineer showing the necessary temporary support of the utilities during coordinated construction work. Bidders are directed to contact the affected third party utility owners about their requirements before submitting a Bid Proposal.

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

8. Addenda. Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code § 4104.5, City reserves the right to issue addenda prior to bid time. Each bidder is solely responsible for ensuring it has received and reviewed all addenda prior to submitting its bid. Bidders should check City's website periodically for any addenda or updates on the Project at:
<https://apps.cupertino.org/bidmanagement/index.aspx>.

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

10. **Bid Protest.** Any bid protest against another bidder must be submitted in writing and received by City at 10300 Torre Avenue, Cupertino, CA 95014 or sent via email at johnr@cupertino.org before 5:00 p.m. no later than two Working Days following the date upon which the City posts the bid results ("Bid Protest Deadline") and must comply with the following requirements:
- 10.1 **General.** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City's reasonable costs to administer the bid protest. Any such fee must be submitted to City no later than the Bid Protest Deadline, unless otherwise specified. For purposes of this Section 10, a "Working Day" means a day that City is open for normal business, and excludes weekends and holidays observed by City. Pursuant to Public Contract Code § 4104, inadvertent omission of a Subcontractor's DIR registration number on the Subcontractor List form is not grounds for a bid protest, provided it is corrected within 24 hours of the bid opening or as otherwise provided under Labor Code § 1771.1(b).
- 10.2 **Protest Contents.** The bid protest must contain a complete statement of the basis for the protest and must include all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the *specific* portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting bidder and any person submitting the protest on behalf of or as an authorized representative of the protesting bidder.
- 10.3 **Copy to Protested Bidder.** Upon submission of its bid protest to City, the protesting bidder must also concurrently transmit the protest and all supporting documents to the protested bidder, and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Bid Protest Deadline.
- 10.4 **Response to Protest.** The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two Working Days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must attach all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person responding on behalf of or representing the protested bidder if different from the protested bidder.
- 10.5 **Copy to Protesting Bidder.** Upon submission of its response to the bid protest to the City, the protested bidder must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting bidder and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- 10.6 **Exclusive Remedy.** The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy in the event of a bid protest. A bidder's failure to comply with these procedures will constitute a waiver

of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

- 10.7 Right to Award.** City reserves the right, acting in its sole discretion, to reject any bid protest that it determines lacks merit, to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a Notice to Proceed with the Work notwithstanding any pending or continuing challenge to its determination.
- 11. Reservation of Rights.** City reserves the unfettered right, acting in its sole discretion, to waive or to decline to waive any immaterial bid irregularities; to accept or reject any or all bids; to cancel or reschedule the bid; to postpone or abandon the Project entirely; or to perform all or part of the Work with its own forces. The Contract will be awarded, if at all, within 60 days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid. Any planned start date for the Project represents the City's expectations at the time the Notice Inviting Bids was first issued. City is not bound to issue a Notice to Proceed by or before such planned start date, and it reserves the right to issue the Notice to Proceed when the City determines, in its sole discretion, the appropriate time for commencing the Work. The City expressly disclaims responsibility for any assumptions a bidder might draw from the presence or absence of information provided by the City in any form. Each bidder is solely responsible for its costs to prepare and submit a bid, including site investigation costs.
- 12. Bonds.** Within ten calendar days following City's issuance of the Notice of Potential Award to the apparent low bidder, the bidder must submit payment and performance bonds to City as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract Price as awarded, including additive alternates, if applicable.
- 13. License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. The successful bidder must also obtain a City business license within 5 days following City's issuance of the Notice of Potential Award. Subcontractors must also obtain a City business license before performing any Work.
- 14. Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code §§ 1777.1 or 1777.7 is prohibited from performing work on the Project.
- 15. Safety Orders.** If the Project includes construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, each bid must include a bid item for adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which comply with safety orders as required by Labor Code § 6707.
- 16. Subcontractor Work Limits.** The prime contractor must perform at least 51% of the Work on the Project, calculated as a percentage of the base bid price, with its own forces, except for any Work identified as "Specialty Work" in the Contract Documents. The total bid amount for any such Specialty Work, as shown on the Bid Schedule, may be deducted from the base bid price before computing the 51% self-performance requirement. The remaining Work may be performed by qualified Subcontractor(s).
- 17. Additive and Deductive Alternates.** As required by Public Contract Code § 20103.8, if

this bid solicitation includes additive or deductive items, the method below will be used to determine the lowest bid. City retains the right to add to or deduct from the Contract any of the additive or deductive alternates included in the Bid Proposal.

The lowest bid will be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

- 18. Bid Schedule.** Each bidder must complete the Bid Schedule form with unit prices as indicated, and submit the completed Bid Schedule with its Bid Proposal.
 - 18.1 Incorrect Totals.** In the event a computational error for any bid item (base bid or alternate) results in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect the corrected amount as the product of the estimated quantity and the unit cost. In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid for material error under Public Contract Code § 5100 et seq.
 - 18.2 Estimated Quantities.** The quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased, and no increase in the unit price, and without regard to the percentage increase or decrease of the estimated quantity and the actual quantity.
- 19. Bidder's Questionnaire.** A completed, signed Bidder's Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within 48 hours following a request by City. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.

END OF INSTRUCTIONS TO BIDDERS

Bid Proposal

Wilson Park Community Garden Project

_____ (“Bidder”) hereby submits this Bid Proposal to City of Cupertino (“City”) for the above-referenced project (“Project”) in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced in the Notice.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, including all labor, materials, supplies, and equipment and all other direct or indirect costs including, but not limited to, taxes, insurance and all overhead for the following price (“Base Bid”):
\$ _____.

2. **Bid Alternates.** Bidder submits the following prices for the specified bid alternates:

Alternate #1: Reduced hose bibb, riser and mainline (deduction)

Add/Deduct: \$ _____

Alternate #2: Furnish and install bench and bench footing

Add/Deduct: \$ _____

Alternate #3: Furnish and install table and table footing

Add/Deduct: \$ _____

Alternate #4: Furnish and install storage shed

Add/Deduct: \$ _____

Alternate #5: Furnish and install concrete pad and storage shed ramp

Add/Deduct: \$ _____

Alternate #6: Reduce decomposed granite pavement (deduction)

Add/Deduct: \$ _____

3. **Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this Bid. Bidder waives any claims it might have against the City based on its failure to receive, access, or review any addenda for any reason. Bidder specifically acknowledges receipt of the following addenda:

Addendum: Date Received:

#01 _____

#02 _____

#03 _____

#04 _____

Addendum: Date Received:

#05 _____

#06 _____

#07 _____

#08 _____

4. **Bidder’s Certifications and Warranties.** By signing and submitting this Bid Proposal, Bidder certifies and warrants the following:

- 4.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder’s knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code § 1104.

- 4.2 Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.
- 4.3 Bidder Responsibility.** Bidder is a responsible bidder, with the necessary ability, capacity, experience, skill, qualifications, workforce, equipment, and resources to perform or cause the Work to be performed in accordance with the Contract Documents and within the Contract Time.
- 4.4 Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid. All statements and information provided in this Bid Proposal and enclosures are true and correct to the best of Bidder's knowledge.
- 4.5 Nondiscrimination.** In preparing this Bid, the Bidder has not engaged in discrimination against any prospective or present employee or Subcontractor on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status.
- 4.6 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Bidder is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 5. Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, within ten days following issuance of the Notice of Potential Award to Bidder, Bidder will do all of the following:
- 5.1 Execute Contract.** Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;
- 5.2 Submit Required Bonds.** Submit to City a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and
- 5.3 Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.
- 6. Bid Security.** As a guarantee that, if awarded the Contract, Bidder will perform its obligations under Section 4 above, Bidder is enclosing bid security in the amount of ten percent of its maximum bid amount in one of the following forms (check one):

_____ A cashier's check or certified check payable to City and issued by
 _____ [Bank name] in the amount of
 \$ _____.

_____ A bid bond, using the Bid Bond form included with the Contract Documents, payable to City and executed by a surety licensed to do business in the State of California.

This Bid Proposal is hereby submitted on _____, 20__.

s/ _____

 Name and Title

s/ _____
[See Section 3 of Instructions to Bidders]

Name and Title

Company Name

License #, Expiration Date, and Classification

Address

DIR Registration #

City, State, Zip

Phone

Contact Name

Contact Email

END OF BID PROPOSAL

Bid Schedule

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

AL = Allowance
LF = Linear Foot

CF = Cubic Feet
LS = Lump Sum

CY = Cubic Yard
SF = Square Feet

EA = Each MO = Month
TON = Ton (2000 lbs)

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
1	Bonding and Mobilization	1	LS	\$	\$
2	Construction Staking	1	LS	\$	\$
3	Tree Protection	1	LS	\$	\$
4	Inlet Protection	2	EA	\$	\$
5	Fiber Rolls	405	LF	\$	\$
6	Stabilized Construction Entrance	1	EA	\$	\$
7	Construction Fencing	475	LF	\$	\$
8	Clearing and Grubbing	1	LS	\$	\$
9	Sawcut	40	LF	\$	\$
10	Demolish Asphalt Pavement	1700	SF	\$	\$
11	Demolish Concrete Pavement	250	SF	\$	\$
12	Demolish Site Furnishings	1	LS	\$	\$
13	Demolish Header Board	210	LF	\$	\$
14	Earthwork and Grading	1	LS	\$	\$
15	Soil Preparation and Fine Grading	1	LS	\$	\$
16	Irrigation and Utility Adjustments	1	LS	\$	\$
17	Irrigation	1	LS	\$	\$
18	Adjust Utility Boxes	3	EA	\$	\$
19	Perimeter Gate	1	EA	\$	\$
20	Perimeter Fence	190	LF	\$	\$
21	Hardware Cloth Beneath Site	2620	SF	\$	\$
22	Decomposed Granite Pavement	780	SF	\$	\$
23	ADA Planter Box	2	EA	\$	\$
24	Raised Planter Box	14	EA	\$	\$

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
25	Header Board	80	LF	\$	\$
26	Mulch Surfacing	1600	SF	\$	\$
27	Planter Topsoil	1	LS	\$	\$
28	Landscape Mulch	1	LS	\$	\$
29	Shrub, 5 Gallon	28	EA	\$	\$
30	Concrete Threshold	1	EA	\$	\$
31	Pedestrian Concrete Pavement	690	SF	\$	\$
32	Vehicular Concrete Pavement	220	SF	\$	\$
33	Asphalt Pavement	1060	SF	\$	\$
34	Signage	2	EA	\$	\$
35	Landscape Maintenance	1	MO	\$	\$

TOTAL BASE BID: Items 1 through _____ inclusive: \$ _____

BID ALTERNATIVES

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
BA 1	Bid Alternate #1: Reduced hose bibb, riser and mainline (deduction)	7	EA	\$	\$
BA 2	Bid Alternate #2: Furnish and install bench and bench footing	4	EA	\$	\$
BA 3	Bid Alternate #3: Furnish and install table and table footing	1	EA	\$	\$
BA 4	Bid Alternate #4: Furnish and install storage shed	1	EA	\$	\$
BA 5	Bid Alternate #5: Furnish and install concrete pad and storage shed ramp	1	LS	\$	\$
BA 6	Bid Alternate #6: Reduce decomposed granite pavement (deduction)	400	SF	\$	\$

BIDDER NAME: _____

END OF BID SCHEDULE

Subcontractor List

For each Subcontractor that will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the Work, the name of the Subcontractor, its California contractor license number, the location of its place of business, its DIR registration number, and the portion of the Work that the Subcontractor is performing based on a percentage of the Base Bid price.

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NO.	LOCATION OF BUSINESS	DIR REG. NO.	PERCENT OF WORK

END OF SUBCONTRACTOR LIST

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

Noncollusion Declaration

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ [title] of _____
[business name], the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code § 7106 and Title 23 U.S.C § 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

s/ _____

Name [print]

END OF NONCOLLUSION DECLARATION

Bid Bond

_____ ("Bidder") has submitted a bid, dated _____, 20____ ("Bid"), to City of Cupertino ("City") for work on the Wilson Park Community Garden Project ("Project"). Under this duly executed bid bond ("Bid Bond"), Bidder as Principal and _____, its surety ("Surety"), are bound to City as obligee in the penal sum of ten percent of the maximum amount of the Bid (the "Bond Sum"). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with City in accordance with the terms of the Bid.
2. **Submittals.** Within ten days following issuance of the Notice of Potential Award to Bidder, Bidder must submit to City the following:
 - 2.1 **Contract.** The executed Contract, using the form provided by City in the Project contract documents ("Contract Documents");
 - 2.2 **Payment Bond.** A payment bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
 - 2.3 **Performance Bond.** A performance bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
 - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required by the Instructions to Bidders or Notice of Potential Award.
3. **Enforcement.** If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to City. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____
4. **Duration and Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise it will remain in full force and effect for 60 days following the bid opening or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code §§ 2819 and 2845.

[Signatures are on the following page.]

This Bid Bond is entered into and effective on _____, 20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

BIDDER:

Business Name

s/ _____

Date

Name, Title

END OF BID BOND

Bidder's Questionnaire

Wilson Park Community Garden Project

Within 48 hours following a request by City, a bidder must submit to City a completed, signed Bidder's Questionnaire using this form and all required attachments, including clearly labeled additional sheets as needed. City may request the Questionnaire from one or more of the apparent low bidders following the bid opening, and may use the completed Questionnaire as part of its investigation to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part A: General Information

Bidder Business Name: _____ ("Bidder")

Check One: ☐ Corporation (State of incorporation: _____)
 ☐ Partnership
 ☐ Sole Proprietorship
 ☐ Joint Venture of: _____
 ☐ Other: _____

Main Office Address and Phone: _____

Local Office Address and Phone: _____

Website address: _____

Owner of Business: _____

Contact Name and Title: _____

Contact Phone and Email: _____

Bidder's California Contractor's License Number(s): _____

Bidder's DIR Registration Number: _____

Part B: Bidder Experience

1. How many years has Bidder been in business under its present business name? _____ years
2. Has Bidder completed projects similar in type and size to this Project as a general contractor?
_____ Yes _____ No
3. Has Bidder ever been disqualified from a bid on grounds that it is not responsible, or otherwise disqualified or disbarred from bidding under state or federal law?
_____ Yes _____ No

If yes, provide additional information on a separate sheet regarding the disqualification or disbarment, including the name and address of the agency or owner of the project, the type and size of the project, the reasons that Bidder was disqualified or disbarred, and the month and year in which the disqualification or disbarment occurred.

4. Has Bidder ever been terminated for cause, alleged default, or legal violation from a construction project, either as a general contractor or as a subcontractor?

_____ Yes _____ No

If yes, provide additional information on a separate sheet regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether Bidder was under contract as a general contractor or a subcontractor, the reasons that Bidder was terminated, and the month and year in which the termination occurred.

5. Provide information about Bidder's past projects performed as general contractor as follows:

- 5.1 Three most recently completed public works projects within the last three years;
- 5.2 Three largest completed projects within the last three years; and
- 5.3 Any project which is similar to this Project including scope and character of the work.

6. Use separate sheets to provide all of the following information for each project identified in response to the above three categories:

- 6.1 Project name, location, and description;
- 6.2 Owner (name, address, email, and phone number);
- 6.3 Prime contractor, if applicable (name, address, email, and phone number);
- 6.4 Architect or engineer (name, email, and phone number);
- 6.5 Project and/or construction manager (name, email, and phone number);
- 6.6 Scope of work performed (as general or as subcontractor);
- 6.7 Initial contract price and final contract price (including change orders);
- 6.8 Original scheduled completion date and actual date of completion;
- 6.9 Time extensions granted (number of days);
- 6.10 Number and amount of stop notices or mechanic's liens filed;
- 6.11 Amount of any liquidated damages assessed against Bidder; and
- 6.12 Nature and resolution of any project-related claim, lawsuit, mediation, or arbitration involving Bidder.

Part C: Safety

1. Provide Bidder's Experience Modification Rate (EMR) for the last three years:

Year	EMR

2. Complete the following, based on information provided in Bidder's CalOSHA Form 300 or Form 300A, Annual Summary of Work-Related Illnesses and Injuries, from the most recent past calendar year:

- 2.1 Number of lost workday cases: _____
- 2.2 Number of medical treatment cases: _____
- 2.3 Number of deaths: _____

3. Has Bidder ever been cited, fined, or prosecuted by any local, state, or federal agency, including OSHA, CalOSHA, or EPA, for violation of any law, regulation, or requirements pertaining to health and safety?

_____ Yes _____ No

If yes, provide additional information on a separate sheet regarding each such citation, fine, or prosecution, including the name and address of the agency or owner of the project, the type and size of the project, the reasons for and nature of the citation, fine, or prosecution, and the month and year in which the incident giving rise to the citation, fine, or prosecution occurred.

4. Name, title, and email for person responsible for Bidder's safety program:

_____	_____	_____
Name	Title	Email

Part D: Verification

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named Bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Signature: _____ Date: _____

By: _____
Name and Title

END OF BIDDER'S QUESTIONNAIRE

Contract

This public works contract ("Contract") is entered into by and between City of Cupertino ("City") and _____ ("Contractor"), for work on the Wilson Park Community Garden Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On _____, 20____, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Plans and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Potential Award;
 - 2.12 Notice to Proceed; and
 - 2.13 The following: No other documents
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents. Contractor agrees to carry out its work in compliance with any applicable local, State or Federal order regarding COVID-19.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$_____ ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 80 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$1,500.00 per day for each day of

unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 DIR Registration. City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Department of Public Works
10300 Torre Avenue
Cupertino, CA 95014
Attn: John Raaymakers, Project Manager
johnr@cupertino.org

Copy to: <Name/Title>
<Email address>

Contractor:

Name: _____
Address: _____
City/State/Zip: _____
Phone: _____
Attn: _____
Email: _____
Copy to: _____

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313.

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

s/ _____

s/ _____

Name, Title

Name, Title

Date: _____

Date: _____

Attest:

s/ _____

Name, Title

Date: _____

CONTRACTOR:

Business Name

s/ _____

Seal:

Name, Title

Date: _____

Second Signature (See Section 12.8):

s/ _____

Name, Title

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT

Payment Bond

City of Cupertino ("City") and _____ ("Contractor") have entered into a contract for work on the Wilson Park Community Garden Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than \$ _____, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Santa Clara County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20__.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

END OF PAYMENT BOND

Performance Bond

City of Cupertino ("City") and _____ ("Contractor") have entered into a contract for work on the Wilson Park Community Garden Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than \$_____ to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations will remain in full force and effect.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
5. **Contractor Default.** Upon written notification from City of Contractor's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or
 - 5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____

City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

8. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Santa Clara County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
9. **Effective Date; Execution.** This Bond is entered into and effective on _____, 20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

END OF PERFORMANCE BOND

General Conditions

Article 1 - Definitions

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

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

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

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

City means the municipality which has entered into the Contract with Contractor for performance of the Work, acting through its City Council, officers, employees, City Engineer, and any other authorized representatives.

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

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

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

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

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

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

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

Day means a calendar day unless otherwise specified.

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

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

Engineer means the City Engineer for the City of Cupertino and his or her authorized delegates.

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

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

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

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

Furnish means to purchase and deliver for the Project.

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

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

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

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

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

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

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

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

Project means the public works project referenced in the Contract.

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

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

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

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

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

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

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

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

Technical Specifications has the same meaning as Specifications.

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

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

Holidays observed by the City and furlough days are:

- 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. Juneteenth, June 19;
- g. Independence Day, July 4;
- h. Labor Day, first Monday in September;
- i. Veterans' Day, November 11;
- j. Thanksgiving Day, as designated by the President;

- k. The Day following Thanksgiving Day;
- l. Christmas Day, December 25;
- m. City Closure, December 24, 26, 27, 28, 29, 30 and 31: and
- n. 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.

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

Article 2 - Roles and Responsibilities

2.1 City.

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

2.2 Contractor.

- (A) **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of City, and with minimal inconvenience to the public.
- (B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques,

sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by City or specified in the Contract Documents. From the date of commencement of the Work until either the date on which City formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism or theft.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to City, and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents and Laws and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.

(F) **Meetings.** Contractor, its project manager, superintendent and any primary Subcontractors requested by City, must attend a pre-construction conference, if requested by City, as well as weekly Project progress meetings scheduled with City. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners.

(G) **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and

restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor will permit review of and/or provide copies of any of these construction records.

(H) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee or Subcontractor or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

(I) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts or equipment. Workmanship, materials, parts or equipment that do not conform to the requirements under the Plans, Specifications and every other Contract Document, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by City, and any Extra Work performed without City's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If City elects to correct defective Work due to Contractor's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after City's acceptance of the Project

or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

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

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a City business license before performing any Work.

(B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, but only if and to the extent that City accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

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

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by City. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

(B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify City if work performed by others, including work or activities performed by City's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. City reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

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

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current City-accepted schedule for the Work and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

(E) **Effect of Review and Acceptance.** Review and acceptance of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or any material furnished, installed, fabricated or used without City's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of City, including costs for the Design Professional, Project Manager, or Inspector.

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

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

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

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

Article 3 - Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Plans and Specifications.** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other,

Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the drawing(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

(B) ***Duty to Notify and Seek Direction.*** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from City before proceeding further with the related Work. The RFI must notify City of the issue and request clarification, interpretation or direction. The Engineer's clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that City's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Article 5 and 6.)

(C) ***Figures and Dimensions.*** Figures control over scaled dimensions.

(D) ***Technical or Trade Terms.*** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) ***Measurements.*** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.

(F) ***Compliance with Laws.*** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

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

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;

- (E) Attachment B – Federal Contract Requirements (only if used);
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Plans;
- (K) Notice of Potential Award;
- (L) Notice Inviting Bids;
- (M) Attachment A – Federal Bidding Requirements (only if used);
- (N) Instructions to Bidders;
- (O) Contractor's Bid Proposal and attachments;
- (P) the City's standard specifications, as applicable; and
- (Q) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as the Caltrans Standard Specifications or Caltrans Special Provisions.

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

(A) **Limitations.** The "General Provisions" of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

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

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

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

modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

- 3.5 Current Versions.** Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code or regulation in effect at the time the Contract is signed.
- 3.6 Conformed Copies.** If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor's responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor's sole expense.
- 3.7 Ownership.** No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and City will retain all rights to such works, including the right to possession.

Article 4 - Bonds, Indemnity, and Insurance

- 4.1 Payment and Performance Bonds.** Within ten days following issuance of the Notice of Potential Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.
- (A) **Surety.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.
- (B) **Supplemental Bonds for Increase in Contract Price.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from City pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.
- 4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by

Public Contract Code § 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

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

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

(1) *Commercial General Liability ("CGL") Insurance:* The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work, including contractor's protected coverage, contractual liability, products and completed operations, and broad form property damage, with limits of at least \$2,000,000 per occurrence and at least \$4,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including required endorsements.

(2) *Automobile Liability Insurance:* The automobile liability insurance policy must provide coverage of at least \$2,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired and non-owned auto liability.

(3) *Workers' Compensation Insurance and Employer's Liability:* The workers' compensation and employer's liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by the statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.

(4) *Pollution Liability Insurance:* The pollution liability insurance policy must be issued on an occurrence basis, providing coverage of at least \$2,000,000 for all loss arising out of claims for bodily injury, death, property damage, or environmental damage caused by pollution conditions resulting from the Work.

(5) *Builder's Risk Insurance:* The builder's risk insurance policy must be issued on an occurrence basis, for all-risk or "all perils" coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of City.

(B) **Notice.** Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City.

(C) **Waiver of Subrogation.** Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against City.

(D) **Required Endorsements.** The CGL policy, automobile liability policy, pollution liability policy, and builder's risk policy must include the following specific endorsements:

(1) The City, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, "Additional Insured") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract. The additional insured endorsement must be provided using ISO form CG 20 10 11 85 or an equivalent form approved by the City.

(2) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(3) The insurance provided by Contractor is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss.

(4) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

(E) **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.

(F) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions that apply to the required insurance (collectively, "deductibles") in excess of \$100,000 are subject to approval by the City's Risk Manager, acting in his or her sole discretion, and must be declared by Contractor when it submits its certificates of insurance and endorsements pursuant to this Section 4.3. If the City's Risk Manager determines that the deductibles are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

(G) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability or builder's risk insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in

writing in advance by the City's Risk Manager. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

Article 5 - Contract Time

5.1 Time is of the Essence. Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.

(B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.

(C) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

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

(A) **Baseline (As-Planned) Schedule.** Within ten calendar days following City's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to City for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) **Specialized Materials Ordering.** Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase orders date(s).

(B) **City's Review of Schedules.** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.

(C) **Progress Schedules.** After City accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by City, for review and acceptance with each application for a progress payment, or when otherwise specified by City, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery dates for the Project.

(1) **Float.** The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.

(2) **Failure to Submit Schedule.** Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to ten percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code § 7102.

(D) **Recovery Schedule.** If City determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(E) **Effect of Acceptance.** Contractor and its Subcontractors must perform the Work in accordance with the most current City-accepted schedule unless otherwise directed by City. City's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(F) **Posting.** Contractor must at all times prominently post a copy of the most current City-accepted progress or recovery schedule in its on-site office.

(G) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(H) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding holidays, during City's normal business hours, except as provided in the Special Conditions or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.

(B) **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.

(C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

(1) Based on historic records for the Project location from the Western Regional Climate Center, Contractor's schedule should assume the following number of normal Weather Delay Days and precipitation for each month:

Month	# Normal Weather	Precipitation
-------	------------------	---------------

Delay Days		
January	6	2.86
February	6	2.66
March	6	2.29
April	3	1.20
May	1	0.44
June	0	0.10
July	0	0.02
August	0	0.07
September	1	0.19
October	2	0.76
November	4	1.51
December	5	2.43
Total	34	14.53

(2) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.

(3) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.

(4) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.

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

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

(8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;

(9) time required for repair of, re-testing, or re-inspection of defective Work;

(10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or

(11) City's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(E) **Compensable Delay.** Pursuant to Public Contract Code § 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to causes that are beyond the control of either City or Contractor, including Weather Delay Days, discovery of Historic or Archeological Items pursuant to Section 7.18, or the actions or inactions of third parties or other agencies, is not Compensable Delay, and will only entitle Contractor to an extension of time commensurate with the time lost due to such delay.

(F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.

(G) **Request for Extension of Contract Time or Recoverable Costs.** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to City within ten calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.

(1) **Required Contents.** The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) *Delay Days and Costs.* The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving that: the delay was an Excusable or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Legal Compliance.* Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code § 7102.

(6) *No Waiver.* Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.

(7) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.

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

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable or Compensable Delay, as set forth above.

(B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.

(E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

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

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

(B) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If Contractor refuses to perform the Work in dispute,

City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(C) **Extra Work.** City may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

(D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

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

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

(A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within ten calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit City to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

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

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

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1, Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.

(B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.

(C) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, and which may include a not-to-exceed limit, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:

(1) All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;

(2) All direct material costs provided by the Contractor, including sales tax, plus 15% markup;

(3) All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;

(4) All direct additional subcontract costs plus 10% markup for Work performed by Subcontractors; and

(5) Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.

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

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

Article 7 - General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

(A) **Permits, Fees, and City Business License.** Contractor must obtain and pay for all permits, fees, or licenses required to perform the Work, including a City business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.

(B) **Taxes.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

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

(A) **Utilities.** Contractor must install and maintain the power, water, sewer and all other utilities required for the Project site, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 Noninterference and Site Management. Contractor must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

(A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use and dispose of, at its sole expense, any additional Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.

(C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure the public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

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

7.5 Project Site and Nearby Property Protections.

(A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the City has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor's failure to adequately secure the Work or any Worksite.

(1) Subject to City's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

(2) City wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan, subject to City's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

(3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location.

(4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(B) **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

(C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

(D) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.

(E) **Notification of Property Damage.** Contractor must immediately notify the City of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to City.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify City of any defects discovered in City-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

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

(B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. City has sole discretion to determine whether a proposed substitution is equal, and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by City.

(F) **Contractor's Obligations.** City's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and locations during construction and/or fabrication and at any Worksite, including at shops and yards as well as at the Project site. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.

(B) **Scheduling and Notification.** Contractor must cooperate with City in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no later than noon of the Working Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

(C) **Responsibility for Costs.** City will bear the initial cost of inspection and testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

(1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's hourly rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.

(4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.

(5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the required inspection(s) will also be subject to rejection by City.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.

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

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws.

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

(C) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.

(1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.

(2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.

(D) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

(F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any City clean up order, City may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due to Contractor.

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

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to City at least ten days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Training.** Contractor or its Subcontractors must train City's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate as-built set of the Plans which will be used

solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

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

7.12 Existing Utilities.

(A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.

(B) **Unidentified Utilities.** Pursuant to Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 **Notice of Excavation.** Contractor must comply with all applicable requirements in Government Code §§ 4216 through 4216.5, which are incorporated by reference herein. Government Code § 4216.2 requires that, except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert, at least two working days, but not more than 14 calendar days, before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations. Contractor may not begin excavation until it has obtained and submitted to Engineer an inquiry identification number from Underground Services Alert.

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

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

(1) Material that Contractor believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;

(2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids; or

(3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by City, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and City.

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

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

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide,

preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

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

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with it without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

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

7.21 Mined Materials. Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code § 2710 et seq., any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation included on the AB 3098 List,

which is available online at:
<ftp://ftp.consrv.ca.gov/pub/omr/AB3098%20List/AB3908List.pdf>.

Article 8 - Payment

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

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

(B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

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

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may withhold additional amounts as set forth in Section 8.3, below.

- 8.3 Adjustment of Payment Application.** City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

(A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, City may

withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Project site, City may deduct an amount based on the estimated cost to repair or replace.

(C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.

(D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(E) For any unreleased stop notice, City may withhold 125% of the amount claimed.

(F) For Contractor's failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents, City may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.

(G) For Contractor's failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents, City may withhold or deduct an amount based on the City's cost to prepare the as-builts.

(H) For Work performed without Shop Drawings that have been accepted by City, when accepted Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated costs to correct unsatisfactory Work or diminution in value.

(I) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.

(J) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to Contractor.

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

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

(A) **Substitution of Securities.** As provided by Public Contract Code § 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code § 22300 and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (f) of Public

Contract Code § 22300 (“Escrow Agreement”), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City’s rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3, Adjustment of Payment Application, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City’s governing body or authorized designee pursuant to Section 11.1(C), Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code § 7107(c).

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

(A) **Withholding for Stop Notice.** Pursuant to Civil Code § 9358, City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys’ fees and costs, as authorized by law.

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

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

Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

- 8.8 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code § 7100. Any disputed amounts may be specifically excluded from the release.
- 8.9 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 - Labor Provisions

- 9.1 Discrimination Prohibited.** Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.
- 9.2 Labor Code Requirements.**
- (A) **Eight Hour Day.** Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.
- (B) **Penalty.** Pursuant to Labor Code § 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.
- (C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.
- (D) **Notices.** Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.
- 9.3 Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code §§ 1720 or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Project site.
- (A) **Penalties.** Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

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

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct; and

(2) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

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

Article 10 - Safety Provisions

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

(A) **Reporting Requirements.** Contractor must immediately notify the City of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must

include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by Laws.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Project site is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

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

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

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

10.4 Hazardous Condition. Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition

exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

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

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

(A) ***Final Inspection and Punch List.*** When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, City will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.

(B) ***Requirements for Final Completion.*** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to City's satisfaction.

(C) ***Acceptance.*** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

(D) ***Final Payment and Release of Retention.*** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

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

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

(F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner if required by the circumstances, City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H), below.

(G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.

(H) **Reimbursement.** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action,

Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs City incurs to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.

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

Article 12 - Dispute Resolution

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

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, when the demand has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part. A Claim may also include that portion of a unilateral Change Order that is disputed by the Contractor.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount and applies in addition to the provisions of Public Contract Code § 9204 and § 20104 et seq., which are incorporated by reference herein.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

(E) **Informal Resolution.** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and City.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a "Claim" submitted pursuant to this Article 12 and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format and Content.** A Claim must be submitted in the following format:

- (1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).
- (2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.
- (3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for each separate issue or Claim:
 - a. A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - b. Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);
 - c. A chronology of relevant events; and
 - d. Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.

(4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

(5) Include the following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

(C) ***Submission Deadlines.***

(1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 15 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 15 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.7, Final Payment.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. ***Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.***

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

(A) ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

(B) **Non-Waiver.** Any failure by City to respond within the times specified above will not be construed as acceptance of the Claim, in whole or in part, or as a waiver of any provision of these Contract Documents.

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

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

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

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor will mutually agree to a mediator, as provided under Public Contract Code § 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) **Government Code Claims.**

(1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a

Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

- 12.6 Tort Claims.** This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.
- 12.7 Arbitration.** It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.8 Burden of Proof and Limitations.** Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.
- 12.9 Legal Proceedings.** In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.
- 12.10 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

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

(A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for

any damages or loss resulting from its failure to adequately secure and protect the Project.

(B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.

(C) **Failure to Comply.** Contractor will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

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

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

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

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

(B) **Notice of Default and Opportunity to Cure.** Upon City's declaration that Contractor is in default due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford Contractor the opportunity to cure

the default within ten days of City's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

(C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, City may issue written notice to Contractor and its performance bond surety of City's termination of the Contract for default.

(D) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond within seven calendar days from the date of the notice of termination pursuant to paragraph (C), City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination, where "additional cost" means all cost in excess of the cost City would have incurred if Contractor had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

(F) **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

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

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

(1) **Completed Work.** The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values

and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

(2) **Demobilization.** Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and

(3) **Termination Markup.** Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

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

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

(A) **General.** Upon termination City may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to City.

(B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to City all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

(C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:

(1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).

(2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.

(3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.

(4) As directed in the notice, Contractor must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.

(5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

(D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance to the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.

(E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code § 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.
- 14.3 Waiver.** City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.
- 14.6 Survival.** The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6, of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7,

Ownership, Section 4.2, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

Special Conditions

1. Authorized Work Days and Hours.

1.1 Authorized Work Days. Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City:

Monday through Friday

1.2 Authorized Work Hours. Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project during the following hours:

Monday through Friday: 7:00 a.m. – 5:00 p.m.

If Contractor is authorized in writing by the City to perform Work on weekends, Contractor is limited to performing Work on the Project during the following hours:

Saturday: 9:00 a.m. – 5:00 p.m.

Sunday: 9:00 a.m. – 4:00 p.m.

1.3 Worker Arrival and Parking. Workers may arrive at the Project site no earlier than 7:00 a.m.

1.4 Equipment and Material Delivery and Off-Haul Hours. No equipment or material may be delivered or off-hauled except between the hours of 7:00 a.m. and 5:00 p.m. No equipment that has a safety backup beeper may be operated before 7:00 a.m. on any day.

2. Noise Limitation. No non-construction noise will be allowed, this includes amplified music, radio or other noise not due to construction activities.

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

3.1 Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;

3.2 List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;

3.3 Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;

3.4 If required, traffic control plans associated with the staging plans that are signed and stamped by a licensed traffic engineer;

3.5 Draft baseline schedule for the Work as required under Section 5.2, to be finalized within ten days after City issues the Notice to Proceed;

3.6 Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to Contractor;

- 3.7 Schedule with list of Project submittals that require City review, and list of the proposed material suppliers;
- 3.8 Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;
- 3.9 Videotape and photographs recording the conditions throughout the pre-construction Project site, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights, structures near the Project such as building faces, canopies, shades and fences, and any other features within the Project area limits;
- 3.10 Any other documents specified in the Special Conditions or Notice of Potential Award.
4. **Insurance Requirements.** The insurance requirements under Section 4.3 of the General Conditions are modified for this Contract, as set forth below. Except as expressly stated below, all other provisions in Section 4.3 are unchanged and remain in full force and effect.
- 4.1 **Pollution Liability Insurance Waived.** The pollution liability insurance policy requirement set forth in subsection 4.3(A)(4) of the General Conditions is hereby waived and does not apply to this Contract.
- 4.2 **Builders Risk Insurance Waived.** The builder's risk insurance policy requirement set forth in subsection 4.3(A)(5) of the General Conditions is hereby waived and does not apply to this Contract.
5. **Construction Manager Role and Authority.** (To be Determined) is the Construction Manager for this Project. The Construction Manager will assist City in the management of the construction of the Project. The Construction Manager may perform services in the areas of supervision and coordination of the work of Contractor and/or other contractors, scheduling the Work, monitoring the progress of the Work, providing City with evaluations and recommendations concerning the quality of the Work, recommending the approval of progress payments to Contractor, or other services for the Project in accordance with the Construction Manager's contract with City.
- 5.1 **Communications.** Contractor must submit all notices and communications relating to the Work directly to the Construction Manager in writing, as follows:
- To be Determined*
- With a copy to the City Project Manager:
- John Raaymakers, PE
johnr@cupertino.org
- 5.2 **On-Site Management and Communication Procedures.** The Construction Manager will provide and maintain a management team on the Project site to provide contract administration as an agent of City and will establish and implement coordination and communication procedures among City, the Design Professional, Contractor, and others.
- 5.3 **Contract Administration Procedures.** The Construction Manager will establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents, Shop Drawings,

samples, other submittals, schedule adjustments, Change Order proposals, written proposals for substitutions, payment applications, and maintenance of logs.

5.4 Pre-Construction Conference. Contractor will attend the pre-construction conference, during which the Construction Manager will review the Contract administration procedures and Project requirements.

5.5 Contractor's Construction Schedule. The Construction Manager will review Contractor's construction schedules and will verify that each schedule is prepared in accordance with the requirements of the Contract Documents.

6. Lines and Grades Verification

All Work must be done to the lines, grades, and elevations indicated on the Plans and Specifications, and in accordance with all applicable codes and laws. Contractor is required to verify forms and other work comply with lines, grades and elevations. Prior to pouring or placing any concrete or asphalt Contractor must have a California licensed land surveyor or civil engineer field verify lines, grades and elevations prior to proceeding with the placement of concrete or asphalt. The land surveyor or civil engineer must have at least five years of relevant experience and must be acceptable to the City. Contractor must provide City verification of the licensing and experience for each proposed land surveyor or civil engineer. Contractor must provide City with inspection results for form and grade work. Contractor must remedy any non-compliant Work at no additional cost to City.

7. Construction and Demolition Debris Management Plan

A completed construction and demolition (C&D) Debris Management Plan must be submitted using the City's Green Halo on-line application. All debris disposal and recycling from the construction project must be tracked throughout the duration of the project. The contractor must use Green Halo cupertino.wastetracking.com to create their Plan and to submit all construction waste generation tonnage information. No additional compensation will be paid for implementation of the Debris Management Plan and failure to meet all plan requirements may result in work stoppage, fines, and/or backcharges. For additional information, visit www.cupertino.org/greendev

8. Mitigation Measures

The following construction impact mitigation measures shall be observed at all times:

- 8.1.** All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- 8.2.** All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- 8.3.** All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- 8.4.** All vehicle speeds on unpaved roads shall be limited to 15 mph.
- 8.5.** All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- 8.6.** Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of

Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- 8.7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 - 8.8. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
 - 8.9. The project shall utilize off-road diesel-powered construction equipment that is rated by the U.S. Environmental Protection Agency (EPA) as Tier 4 or higher for equipment more than 25 horsepower. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Tier 4 interim emissions standard for a similarly sized engine, as defined by the California Air Resources Board's (CARB) regulations. Applicable construction documents shall clearly show the selected emission reduction strategy for construction equipment over 25 horsepower.
 - 8.10. The construction contractor shall maintain a list of all operating equipment in use on the project site for verification by the City. The construction equipment list shall state the makes, models, and number of construction equipment onsite.
 - 8.11. Provide a proposed noise notice sign which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. This sign shall be posted at job site entrances at least 10 days prior to the commencement of construction activities and shall remain in place until construction concludes.
 - 8.12. Haul routes shall avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.
 - 8.13. During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The Contractor will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.
9. **Notification of Residents, Schools and Businesses** – The Contractor shall notify, in writing, residents, businesses and schools within a 300 foot radius of project limits at a minimum of two times prior to start of construction.

The first notice shall be given to all residents, businesses and schools within the project area **five working days** prior to any construction operation. The second notice shall be given to residents, businesses and schools **two working days** prior to any construction operation. Both notices shall be in writing and submitted to the Engineer for review and approval. Sample notice is below.

Notices shall include the project name, describe the nature and duration of the Contractor's operations, and provide a toll-free telephone number or (408) area code number at which a Contractor's representative may be contacted **24 hour per day** for

problems or emergencies encountered by residents and/or businesses. Answering machines and voice mail shall not be permitted. The notice will also contain the City's Construction Management contact information.

A separate notice shall be given at least **two working days** prior to any anticipated service/utility disruption or temporary closure of access to any driveway. The notice shall indicate the duration of the disruption. The Contractor shall submit a written request to the Engineer regarding the temporary closure of access to any driveway. No driveway access shall be closed by the Contractor at any time without prior written authorization from the Engineer.

If construction operations are delayed for any reason beyond the duration stipulated in the notices, the Contractor shall re-issue written notices that explain the delay and provide a revised schedule.

All written notices to residents, schools, businesses, agencies, etc. shall be submitted to the City for review and approval.

Provide the City with a schedule of the notification deliveries so that the City can confirm that the notification was completed.

Payment for compliance with this section shall be deemed included in the various other items of work, and no additional compensation will be allowed therefore.

SAMPLE NOTICE:
NOTICE TO RESIDENTS / BUSINESS OWNERS

Date: **[MONTH] [DAY], [YEAR]**

Subject: **[NAME OF PROJECT] – [One Week OR Two Day] Notice**

This notice is to inform you that the City of Cupertino, Department of Public Works, has contracted with **[CONTRACTOR NAME]** to **[SCOPE OF WORK]** along **[STREET NAME]** from **[ADJACENT CROSS STREET]** to **[ADJACENT CROSS STREET]**.

This **[SCOPE OF WORK]** will mainly occur on **[WEEKDAYS, SEE "SCHEDULE OFWORKING DAYS/HOURS"]** from **[START TIME]** to **[END TIME]** and is scheduled to start in your area **APPROXIMATELY seven days from the date of this notice and will continue from [START DATE] until [END DATE]**. Please be aware that there may be construction activities that cause traffic delays.

[CONTRACTOR NAME] will make every effort to maintain normal traffic access and minimize disruption in your neighborhood. No Parking / Tow-Away signs will be posted in affected areas two working days in advance of enforcement. Access to driveways will be maintained at ALL times during the construction.

Prior to activities in your immediate area, you will be sent a notification **TWO WORKING DAYS** before work begins. **[CONTRACTOR NAME]** and the City of Cupertino, Department of Public Works, apologize for any inconvenience due to these activities. If you have any questions or need assistance as these activities progress, please call the number(s) listed below:

[CONTRACTOR NAME]

[NAME OF PROJECT MANAGER, CONTRACTOR]

Project Manager

(XXX) XXX-XXXX (24-hour number)

City of Cupertino

(NAME OF CONSTRUCTION MANAGEMENT FIRM IF ONE)

(PERSON'S NAME FROM CONSTRUCTION MANAGEMENT FIRM)

(XXX) XXX-XXXX (24-hour number)

City Office: **(408)777-3354** Department of Public Works

Thank you for your patience and cooperation,

[NAME OF PROJECT MANAGER, CONTRACTOR], Project Manager

[NAME OF CONSTRUCTION FIRM]

END OF SPECIAL CONDITIONS

WILSON PARK COMMUNITY GARDEN

PROJECT NO. 2020-1.1

DEFINITION OF BID ITEMS

TS = Technical Specifications

Bid Item #1: Bonding and Mobilization

The contract lump sum price paid for bonding and mobilization shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in bonding and mobilization, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #2: Construction Staking (00 72 00)

The contract lump sum price paid for construction staking shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in construction staking, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #3: Tree Protection (TS 02 41 13)

The contract lump sum price paid for tree protection shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in tree protection, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #4: Inlet Protection (TS 02 41 13)

The contract unit price for each inlet protection shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in table, complete in place, including inlet protection, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #5: Fiber Rolls (TS 02 41 13)

The contract price paid per linear foot for fiber rolls shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in fiber rolls, complete in place, including gravel bags, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #6: Stabilized Construction Entrance (TS 02 41 13)

The contract unit price paid for each stabilized construction entrance shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in stabilized construction entrance, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #7: Construction Fencing (00 72 00)

The contract price paid per linear foot for construction fencing shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in construction fencing, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #8: Clear and Grub (TS 02 41 13)

The contract lump sum price paid for clear and grub shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in clear and grub, complete in place, including remove and dispose of hedge, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #9: Sawcut (TS 02 41 13)

The contract price paid per linear foot for sawcut shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in sawcut, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #10: Demolish Asphalt Pavement (TS 02 41 13)

The contract price paid per square foot for demolish asphalt pavement shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in demolish asphalt pavement, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #11: Demolish Concrete Pavement (TS 02 41 13)

The contract price paid per square foot for demolish concrete pavement shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in demolish concrete pavement, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #12: Demolish Site Furnishings (TS 02 41 13)

The contract lump sum price paid for demolish site furnishings shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in demolish site furnishings, complete in place, including removal and disposal of bench and associated footings, removal and salvage of trash receptacle and installation of salvaged trash receptacle, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #13: Demolish Header Board (TS 02 41 13)

The contract price paid per linear foot for demolish header board shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in demolish header board, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #14: Earthwork and Grading (TS 31 22 00)

The contract lump sum price paid for earthwork and grading shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in earthwork and grading, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #15: Soil Preparation and Fine Grading (TS 31 92 13)

The contract lump sum price paid for fine grading and soil preparation shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in fine grading and soil preparation, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #16: Irrigation and Utility Adjustments

The contract lump sum price paid for irrigation and utility adjustments shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in irrigation and utility adjustments, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #17: Irrigation (TS 32 84 00)

The contract lump sum price paid for irrigation shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in irrigation, complete in place, including mainline, hose bibb, ball valve, submeter, and shrub bubblers, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #18: Adjust Utility Boxes (TS 32 84 00)

The contract unit price for each adjust utility boxes shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in adjust utility boxes, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #19: Perimeter Gate (TS 06 40 00)

The contract unit price for each perimeter gate shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in perimeter gate, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #20: Perimeter Fence (TS 06 40 00)

The contract price paid per linear foot for perimeter fence shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in perimeter fence, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #21: Hardware Cloth Beneath Site (TS 06 40 00)

The contract price paid per square foot for hardware cloth beneath site shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in hardware cloth beneath site, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #22: Decomposed Granite Pavement (TS 32 15 40)

The contract price paid per square foot for decomposed granite pavement shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in decomposed granite pavement, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #23: ADA Planter (TS 32 33 00)

The contract unit price for each ADA planter shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in ADA planter, complete in place, including concrete footing, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #24: Raised Planter Box (TS 06 40 00)

The contract unit price for each raised planter box shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in raised planter box, complete in place, including hardware cloth in box, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #25: Header Board (TS 06 40 00)

The contract price paid per linear foot for header board shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in header board, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #26: Mulch Surfacing (TS 32 93 00)

The contract price paid per square foot for mulch surfacing shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in mulch surfacing, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #27: Landscape Soil Preparation (TS 31 92 13)

The contract lump sum price paid for landscape soil preparation shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in landscape soil preparation, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #28: Landscape Mulch (TS 32 93 00)

The contract price paid per square foot for landscape mulch shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in landscape mulch, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #29: Shrub, 5 gallon (TS 32 93 00)

The contract unit price for each shrub, 5 gallon shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in shrub, 5 gallon, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #30: Concrete Threshold (TS 32 13 13)

The contract unit price for each concrete threshold shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in concrete threshold, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #31: Pedestrian Concrete Pavement (TS 32 13 13)

The contract price paid per square foot for pedestrian concrete pavement shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in pedestrian concrete pavement, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #32: Vehicular Concrete Pavement (TS 32 13 13)

The contract price paid per square foot for vehicular concrete pavement shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in vehicular concrete pavement, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #33: Asphalt Pavement (TS 32 12 16)

The contract price paid per square foot for asphalt pavement shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in asphalt pavement, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #34: Signage (TS 32 33 00)

The contract unit price for each signage shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in signage, complete in place, including mounting hardware, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Item #35: Landscape Maintenance (TS 32 01 90)

The contract price paid per month for landscape maintenance shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in landscape maintenance, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

BID ALTERNATIVES**Bid Alternate #1: Reduced hose bibb, riser and mainline (32 84 00)**

The contract unit price for each hose bibb, riser and mainline shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in hose bibb, riser and mainline, complete in place, including the deduction of hose bibbs risers and mainline, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Alternate #2: Furnish and install bench and bench footing (32 33 00)

The contract unit price for each furnish and install bench shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved furnish and install bench, complete in place, including the furnishing and installation of bench and bench concrete footing, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Alternate #3: Furnish and install table and table footing (32 33 00)

The contract unit price for each furnish and install table shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved furnish and install table, complete in place, including the furnishing and installation of bench and table concrete footing, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Alternate #4: Storage Shed (TS 32 33 00)

The contract unit price for each storage shed shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in storage shed, complete in place, including assembly and exterior painting, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Alternate #5: Furnish and install concrete pad and storage shed ramp (TS 32 33 00)

The contract unit price for each furnish and install concrete pad and storage shed ramp shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in furnish and install concrete pad and storage shed ramp, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

Bid Alternate #6: Reduce decomposed granite pavement (TS 32 15 40)

The contract price paid per square foot for reduce decomposed granite pavement shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all work involved in reduce decomposed granite pavement, complete in place, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.



**PUBLIC WORKS DEPARTMENT
10300 TORRE AVENUE
CUPERTINO, CALIFORNIA 95014**

TECHNICAL SPECIFICATIONS

FOR THE

**Wilson Park Community Garden
19784 Wintergreen Dr.
Cupertino, CA 95014**

**Project Number: 2020-01.1
Date: 6/8/22**

The technical specifications contained herein have been prepared by or under the direction of the following Registered Persons:



Marie Mai

Date: 6/8/22

MARIE MAI

Callander Associates Landscape Architecture, Inc.

Licensed Landscape Architect #5369

Expiration Date: December 31, 2023

**Technical Specifications
For
Wilson Park Community Garden**

Cupertino, California
June 8, 2022

<u>Section #</u>	<u>Section Name</u>
00 72 00	General Requirements
02 41 13	Demolition
06 40 00	Carpentry
09 91 00	Painting
31 22 00	Earthwork and Grading
31 23 00	Trenching and Backfilling
31 92 13	Landscape Soil Preparation
32 01 90	Landscape Maintenance
32 12 16	Asphalt Pavement
32 13 13	Site Concrete
32 15 40	Decomposed Granite Paving
32 33 00	Site Furnishings
32 84 00	Irrigation
32 93 00	Planting

SECTION 00 72 00 GENERAL REQUIREMENTS

PART 1 - INFORMATION AND DOCUMENTS

1.1 REFERENCE TERMS

- A. The term "Owner" or "City" shall mean "City of Cupertino" and the authorized representatives acting on the City's behalf.

1.2 DOCUMENTS

- A. Drawings and Specifications Cooperative: The Drawings and Specifications labeled "Wilson Park Community Garden" are intended to be complementary and items or information shown in one but not the other are to be included as if shown in both. Anything not expressly set forth in either but which is necessarily implied shall be furnished as though specifically both shown and mentioned without extra charge. Should anything be omitted from the drawings that are necessary for proper execution of the work herein described, it shall be the duty of the Contractor to notify the City before signing the contract.
- B. Scaling of Prints: Shall be avoided and, when done, shall be the Contractor's responsibility. Given dimensions shall take precedence. Consult the Engineer for all necessary dimensions that are not given. Check and verify all field dimensions and existing site conditions and sizes before proceeding.
- C. Additional Details: Shall be furnished by the Engineer as they may be required, and shall be considered of equal force with those that accompany these Specifications.
- D. Omissions or Errors: If discovered in the Drawings or Specifications, shall be brought to the attention of the Engineer. No work is to proceed where there is any uncertainty as to the meaning of these documents.

1.3 QUALITY CONTROL

- A. Variations to Expedite the Work: Contractor shall consult the Inspector if at any time a variation in the construction or in the quality of materials as specified is desired. Contractor will be allowed to vary from the documents only after written approval of the City is obtained.
- B. Building Codes: Building Codes of this State and the specific County and City and the latest rules and regulations of the National Board of Fire Underwriters and all other applicable codes and regulations shall be accurately complied with.
- C. Layout of Work: Shall be done under the supervision of the Contractor by a City-approved Land Surveyor licensed in California using professional-type instruments. Contractor shall establish elevations and locate and stake all on-site improvements and grading for approval by the City prior to proceeding and shall be responsible for any damage that may be sustained by the City or others from incorrect locations of site improvements.
- D. Substitutions: Substitutions in material or methods of construction, when necessary because of material shortages or in order to avoid serious delay, may be made only after they are approved by the City in writing.
- E. Alterations and Extras: No alterations shall be made in the work from that shown in the Drawings and Specifications, and no claims will be allowed except in pursuance of a written change order countersigned by the City and the Engineer, and any alterations or changes so ordered shall in no way invalidate the contract. Should the Contractor deem any work to be an extra, the City shall be notified in writing and a written change order shall be issued before any work is executed, or no claim will be allowed.
- F. Public Access: Continuous safe public access (both pedestrian and vehicular) shall be maintained along frontages, from sidewalk to park pathway, and through the park. Construct temporary walkways as necessary.
 - 1. Barricade open depressions and holes that occur in the performance of this work. Post warning light adjacent to the depression.
 - 2. Operate warning light during hours from dusk to dawn each day, and as otherwise required.
 - 3. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by operations under the specified work.

- G. **Material and Workmanship:** All materials and workmanship are to be the best of their respective kinds and comply with industry standards. The terms "or equal", "approved", "selected", and so forth, shall mean as approved. by the Engineer. All materials and equipment used shall be in accordance with the manufacturer's printed directions.

Use adequate numbers of skilled workpersons who are thoroughly trained and experienced in necessary crafts and who are completely familiar with the specified requirements and methods needed for proper performance of work specified. Use equipment adequate in terms of size, capacity, and numbers to accomplish work in a timely manner.

- H. **Defective or Improper Work:** Any work or materials not acceptable to the Engineer must be removed by the Contractor and replaced by approved materials and/or work without extra compensation. In the event that such removal might cause injury to other portions of the work, or if the Contractor refuses or neglects to remove them, then the City may deduct from the contract price such sum as judged to be just and reasonable as damage caused by non-compliance with the plans and specifications, as well as for the difference in value between the balance that may be due the Contractor.
- I. **De-Watering:** Contractor shall generally keep work areas free of all surface water so as to permit construction work to progress in an orderly and workmanlike manner.

PART 2 - SUBMITTALS

2.1 SHOP DRAWINGS

Shop drawings shall be submitted to the Engineer for review only where so called for in the technical specification sections.

2.2 SUBMITTALS

- A. Only where called for in the technical specifications, samples of materials to be used in fulfilling the requirements of the specifications shall be deposited with the Engineer at least 5 working days prior to their use in the work to allow sufficient time for review.

- B. Submit manufacturers' samples to the Engineer at least five (5) working days prior to execution of the work as required in the specifications and in all cases where choice of color, finish, style, or texture is involved.

2.3 TESTING

- A. When testing of materials is required by these specifications, the Contractor shall give the City sufficient notice of readiness for the tests to be taken. The cost of all tests will be borne by the City except for retesting as specified below, and the minor amounts of material required for testing which the Contractor shall furnish. The Contractor will cooperate with the City's representative in the taking of test samples. The City reserves the right to test any materials or equipment furnished by the contractor.
- B. Should the results of any required test fail to meet the requirements of the Specifications, then the Contractor shall furnish new samples of new materials, as directed by the City, and additional tests shall be made at the Contractor's expense until the test results are found to meet the requirements of the documents.

2.4 JOB SITE SAFETY

- A. Neither the professional activities of the Owner's Representative, nor the presence of the Owner's Representative or their employees and subconsultants at a construction/project site, shall relieve the Contractor of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Owner's Representative and their personnel have no authority to exercise any control over any construction contractor or their employees in connection with their work or any health or safety programs or procedures. The Contractor shall be solely responsible for job site safety, and the Owner's Representative and the Owner's Representative's subconsultants shall be indemnified by the Contractor and shall be made additional insureds under the Contractor's policies of general liability insurance.

PART 3 - TEMPORARY FACILITIES AND CONTROLS

3.1 TEMPORARY FACILITIES

A. Utilities:

1. Existing water and electricity service located on-site may be used as required for the work. Contractor shall make all such arrangements as required with the responsible utility company.
2. Existing sanitary facilities may be used on-site as required. Contractor shall obtain permission from and coordinate utility use with the City.
3. Shut downs of utilities for any reason shall be subject to approval by the City. When extended shut downs are required the Contractor shall provide standby service for normal occupancy requirements.
4. Before starting work, coordinate work and obtain clearance from utility companies and/or governmental agencies that supply existing or proposed services to project.
5. Unless they are shown to be removed, protect active utility lines shown on these plans or otherwise made known to the Contractor prior to excavating. If utilities are damaged, they shall be repaired or replaced at no additional cost to the City.
6. If active utility lines are encountered and are not shown on these plans or otherwise made known to the Contractor, the City shall be immediately notified and Contractor shall then take the necessary steps promptly to assure that service will not be interrupted.
7. If service is interrupted by work performed under this section, immediately restore service by repairing damaged utility at no additional cost to the City.
8. If existing utilities interfere with permanent facilities being constructed under this contract, immediately notify and obtain written instructions from the City.
9. Do not proceed with permanent relocation of utilities until written instructions are received from the City.

B. Protection:

1. The Contractor shall provide adequate protection for all portions of the existing site, its improvements, and its occupants throughout the work. All damage done to existing property shall be neatly repaired or replaced at the Contractor's expense. Work shall be executed in careful, orderly manner with the least possible disturbance to public and occupants of the area.
2. Contractor shall protect and save any and all utilities. Any time existing utilities are exposed, the City shall be notified. Repairs on existing utilities

shall not be performed without prior approval and inspection by the City Inspector.

- C. Field Office and Enclosures:
 - 1. Fences, enclosures, storage sheds, etc., required by the Contractor for the storing of tools and materials shall be located where approved in advance by the City. Such fences, enclosures, storage sheds, etc., are at the Contractor's option.
- D. A 6-foot high temporary chain link construction fence shall be installed as shown on plans and shall be maintained for the duration of the project. The temporary construction fencing shall be in good condition, staked into ground wherever possible, and installed with a top tension wire. The fence posts shall be two inch (2") diameter galvanized steel. The fence fabric shall be 11-gauge, with knuckled barbs on the top edges.

3.2 CLEAN-UP

- A. During the construction period, the premises shall be kept free from the accumulation of waste materials or rubbish on a daily basis. The final cleaning shall leave the facilities ready for occupancy with no additional clean up. Clean up dirt, grease, asphalt, etc., from all surfaces. Use no cleaning materials that will damage finishes.

PART 4 - MATERIALS AND EQUIPMENT

4.1 GENERAL

- A. Deliver all materials and equipment to the project site in the manufacturer's original sealed, labeled containers, if any, and protect all packaged and unpackaged items against moisture, dust, tampering or damage from improper handling or storage. Storage location shall be as approved in advance by the City.
- B. Place materials and equipment on order in time to avoid job delay or hindrance. Schedule deliveries to coincide, as nearly as possible, with construction schedule.
- C. Except as specifically noted otherwise, the installation and/or maintenance directions provided by the manufacturer shall be followed for all materials and equipment.

- D. All materials shown on the drawings or specified herein shall be new unused materials unless specified otherwise.
- E. All materials not conforming to the requirements of these specifications shall be considered as defective and all such materials, whether in place or not, shall be rejected and shall be removed immediately from the job site.
- F. Prior to ordering materials or starting work, the Contractor shall verify all measurements at the site and shall be held responsible for their accuracy. No extra compensation will be allowed for differences between actual dimensions and the measurements shown on the drawings.

4.2 SUBSTITUTIONS

- A. In addition to the statements set forth in Paragraph 1.3D of this Section regarding the specification and naming of products, brand names, manufacturers, etc., as referenced within these Specifications, the following will apply:
 - 1. Specific names are indicated to establish quality and functional standards required to do the work, and to meet the quality and functional standard of the contract.
 - 2. Substitute items shall be equal or superior to the items specified at no additional cost to the City.
 - 3. It shall be the responsibility of the Contractor to prove the equality of item(s) proposed for substitution. Therefore, the Contractor shall submit for the City's approval all pertinent product data and samples as the City deems appropriate, to establish said product equality before commencing with that portion of the work. Failure of the Contractor to receive the City's approval in writing shall cause the City to reject said product and its related assembly and/or installation, and require the complete replacement with that item specified, all at the Contractor's cost. Submittals for proposed substitutions will be reviewed once at the cost of the City. Subsequent reviews of submittals will be at the cost of the Contractor on an hourly basis.

4.3 MEASUREMENT & PAYMENT

- A. Where the estimated quantities for a specific portion of the work are designated on the plans as final pay quantities, said estimated quantities shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the Inspector or Engineer. If such dimensions are revised, and such

revisions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the changes in the dimensions. The estimated quantities for such specific portion of the work shall be considered as approximate only and no guarantee is made that the quantities that can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantities. No allowance will be made in the event that the quantities based on computations do not equal the estimated quantities.

In case of a discrepancy between the quantities shown on the plans as final pay quantities and the quantity of the same items shown on the bid form, payment will be based on the final pay quantities shown on the plans.

PART 5 - RECORD DRAWINGS

- 5.1 One complete set of prints shall be furnished to the Contractor by the City on that the Contractor will fully illustrate all revisions, with complete dimensions, made by all crafts in the course of work. This shall include all field changes, adjustments, variances, substitutions, and deletions, whether covered by Change Orders or not. Underground installations must be located precisely as constructed on the Record Drawings.

The Record Drawings shall be updated on a daily basis, as needed, and submitted complete to the City with each pay request. Pay requests will not be processed without the aforementioned Record Drawings.

Upon completion of the work, it shall be the responsibility of the Contractor to transfer all revisions to a complete set of drawings to be provided to the City. The Contractor shall submit the Record Drawings to the City with request for final payment. Final payment will not be processed without the aforementioned Record Drawings.

PART 6 - GUARANTEES

- 6.1 The Contractor shall provide a written guarantee for all the work as required in the Technical Specification section.
- 6.2 Assemble and bind three (3) sets of all certificates, warranties, guarantees, and maintenance manuals into clearly organized files and present the files to the City at the completion of the work. Final Payments shall not be made until all documents are received and approved.

END OF SECTION 00 72 00

SECTION 02 41 13 DEMOLITION

PART 1 - GENERAL

1.1 SCOPE

- A. This section shall consist of all clearing, grubbing, salvaging and removing of site furnishings, sawcutting, and demolishing of header board, planting, irrigation, concrete pavement, asphalt pavement and other miscellaneous items and erosion control measures as shown on the plans or specified herein.
- B. Related work specified elsewhere:
 - 1. Earthwork and Grading - Section 31 22 00
 - 2. Landscape Soil Preparation – Section 31 92 13

1.2 REVIEW

- A. Contractor shall review with City's Representative the exact limits of work and extent of materials to be removed.
 - 1. Examine site and structures and determine exact nature and status of structural elements and utilities prior to commencing demolition.
 - 2. City assumes no responsibility for actual condition of items or structures to be demolished.
 - 3. Prior to commencing the work, perform a site survey to identify existing areas of damage to adjacent building areas and other buildings.

1.3 STANDARDS

- A. All work shall conform to ANSI A10.6, Safety Requirements for Demolition Operations and to the codes and regulations of the City.

1.4 SCHEDULE

- A. Submit schedule indicating proposed methods and sequence of operations for selective demolition work for review prior to commencement of work. Include coordination for shut-off, capping, and continuation of utility services as required.
 - 1. Provide detailed sequence of demolition and removal work to ensure uninterrupted progress of adjacent building uses.
 - 2. Coordinate continued occupancy with adjacent building tenants.

PART 2 – PRODUCTS – NOT USED

PART 3 - EXECUTION

2.1 DEMOLITION OF STRUCTURES

- A. Provide a minimum of three (3) business days notice of demolition activities.
- B. Protection: Provide temporary barricades and other forms of protection as required to protect general public from injury due to selective demolition work. Provide protective measures as required to provide free and safe passage of general public to and from occupied portions of building. Erect temporary covered passageways as required by authorities having jurisdiction.
- C. Environmental Controls: Use water sprinkling, temporary enclosures, and other suitable methods to limit dust and dirt rising and scattering in air to lowest practical level. Comply with governing regulations pertaining to environmental protection.
- D. Utilities: Disconnect all utilities to structures to be demolished in the manner prescribed by the utility company.
- E. Selective Demolition: Perform selective demolition work in a systematic manner. Use methods required to complete work indicated on the drawings in accordance with demolition schedule and governing regulations. Conduct selective demolition operations and debris removal in a manner to ensure minimum interference with roads, streets, walks, and other adjacent occupied or used facilities.
- F. Traffic: Do not close, block or otherwise obstruct streets, walks, or other occupied or used facilities without written permission from authorities having jurisdiction. Provide alternate routes around closed or obstructed traffic ways if required by governing regulations.
- G. Extent: Demolish foundation walls and footings to a depth of not less than 12 inches below finish grade. Demolish and remove below-grade wood or metal construction. Break up below grade concrete slabs. Completely fill below-grade areas and voids resulting from demolition work. Provide fill consisting of approved earth, gravel or sand, free of trash and debris, stones over 6 inch diameter, roots or other organic matter.
- H. Clean-up: Remove debris, rubbish and other materials resulting from demolition

operations from building site at the end of each work day. Site will be left in an orderly, safe manner at the end of each work day. Transport and legally dispose of materials off site.

- I. Damages: Promptly repair damages caused to adjacent facilities by demolition work at no cost to the City.
- J. Contractor Salvage: Items indicated to be removed but of salvageable value to the Contractor may be removed from structure as work progresses. Transport Contractor salvaged items from site as they are removed. Storage or sale of removed items on site will not be permitted.

2.2 CLEARING AND GRUBBING

- A. Roots and other minor organic material shall be removed from topsoil, which shall be stripped and stockpiled for re-use in raised planters. See Section 31 92 13, Landscape Soil Preparation and plans. Soil beneath pavement shall not contain organic material. See Section 31 22 00, Earthwork and Grading.
- B. Contractor shall strip the site of all remaining materials not to remain as part of the finished work. All such materials shall be legally disposed of off-site at Contractor's expense except as otherwise noted on drawings. Items to be disposed of off-site include but are not limited to the following:
 - 1. Trees, weeds, roots and other organic material, wood and trash.
- C. Strip and remove weeds and trash from unpaved areas to be improved. Leave intact ornamental shrubs and trees as identified by City's Representative. The contractor shall protect surrounding areas from damage by equipment or construction operations.
- D. All edges of existing paving to remain shall be sawcut in a neat clean manner.
- E. All excavation within the drip line of trees to remain shall be accomplished in a careful manner. No roots greater than one-inch diameter shall be cut. Where excavation reveals roots greater than one-inch diameter that will interfere with construction, Contractor shall notify City's Representative for direction prior to proceeding.
- F. Where any marked or unmarked utility lines or other underground obstruction or piping may be encountered within the work area, notify the City's Representative or the agencies or service utility companies having jurisdiction

thereof, and take necessary measures to prevent interruption of service (if live). Should such lines or service be damaged, broken, or interrupted, those services shall be repaired immediately and restored by him at his own expense.

- G. Abandoned lines, meters and boxes, obstructions or piping shall be removed, plugged or capped in accordance with the requirements and approval of the agencies affected. It shall be the responsibility of the Contractor to ascertain whether any public facilities exist along the line of work, whether or not shown on the plans; and Contractor shall, at the Contractor's expense, do any necessary work to save from damage all such property in or adjacent to the work, and shall repair all damage thereto caused by the Contractor's operations.
- H. Service connections to adjacent properties requiring removal or adjustment, due to new construction, will be so removed or adjusted during the course of construction operations. The Contractor shall cooperate with the utility companies and/or agencies in such work.
- I. Prior to commencement of site grading work the Contractor shall notify the City's Representative that the site has been cleared. Site grading shall not commence until the City's Representative has completed review of the site and has given approval to proceed.

2.3 TREE PROTECTION

- A. Temporary Fencing: Install temporary fencing around tree drip line to protect remaining trees and vegetation from construction damage prior to any site preparation, demolition, or grading work. Maintain temporary fence and remove when construction is complete.
- B. Protect tree root systems from damage caused by runoff or spillage of noxious materials while mixing, placing, or storing construction materials. Protect root systems from ponding, eroding, or excessive wetting caused by dewatering operations.
- C. Do not store construction materials, debris, or excavated material inside tree drip line. Do not permit vehicles or foot traffic within tree protection zones; prevent soil compaction over root systems.

END OF SECTION 02 41 13

SECTION 06 40 00 CARPENTRY

PART 1 - GENERAL

1.1 SCOPE

- A. Furnish and install all carpentry work as shown and specified, including but not limited to, the following:
 - 1. Perimeter fence
 - 2. Perimeter gate
 - 3. Raised planter box
 - 4. Header board
 - 5. Hose bibb riser
- B. Related work specified elsewhere:
 - 1. Site Concrete - Section 32 13 13

1.2 STANDARDS

- A. All lumber and wood shall conform to the following standards:
 - 1. Except as noted, other limiting provisions shall be in accordance with "Standard Grading Rules for West Coast Lumber".
 - 2. Structural lumber shall be of the kinds and grades as required to meet California Building code requirements.
 - 3. Redwood lumber shall conform to the Standard Specifications for Grades of California Redwood of the Redwood Inspection Service.
- B. All lumber shall be clearly stamped with the grade required. Grade markings for exposed wood shall be placed on a concealed surface.
- C. Connections for wood members shall be designed to conform to the requirements of the 2016 California Building Code, Chapter 23A.
- D. References:
 - 1. ANSI/AF & PA National Design Specification for Wood Construction

1.3 DELIVERY, HANDLING & STORAGE

- A. Storage: Lumber delivered to the site shall be carefully piled off the ground in such a manner as to insure proper drainage, ventilation, and protection from the weather.

1.4 QUALITY CONTROL

- A. Reviews: Contractor shall specifically request at least two (2) working days in advance the following reviews prior to progressing with the work:
 - 1. Layout of perimeter fence and planter boxes on site.
- B. Certification: Written certificates stating quality, type, grade, and origin of all materials shall be delivered to the Owner's Representative before the material is used on the site. Specific certification of the moisture content for all lumber after preservative treatment will be required to be delivered to the Owner's Representative before the material is used on site.
- C. Submittals:
 - 1. Contractor shall provide shop drawings for all rough carpentry. Rough carpentry work, their related components and miscellaneous items are not necessarily individually described. The most important features are noted to show design intent. Contractor shall furnish rough carpentry work and provide shop drawings showing all fasteners, hinges, members, and accessories required to complete the work.
 - 2. Contractor shall provide submittals for the following:
 - i. Corrugated metal panel
 - ii. Wire mesh
 - iii. Hardware cloth

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Lumber: All lumber shall be new with no re-use except where noted. Maximum moisture content of 19%. Lumber shall be redwood, unless otherwise noted. Finish for lumber shall be unpainted, natural finish.
- B. Redwood: Redwood lumber shall have the following grades:
 - 1. Construction Heart (No. 1, 1.3E): All posts and lumber 4x4 or larger
 - 2. Merchantable: Wooden headers, fence boards, pickets, rails, nailers, caps, splices, and stakes.
 - 3. Sizing and Surfacing: Sizes indicated are nominal; provide actual sizes in accordance with PS 20-94. Provide dressed lumber, S4S, except as otherwise indicated.

- C. Drain Rock: Per plans.
- D. Wire Mesh and Hardware Cloth: As available from McNichols, 174 Lawrence Drive Suite G, Livermore, CA, phone 877-958-9343, or approved equal. Orient rectangular mesh with short edge of opening parallel to the ground. Staple to wood members per plans.
 - 1. Wire Mesh, Aboveground: 1"x2" rectangular opening, hot dipped galvanized wire after welded, 21-gauge wire diameter minimum.
 - 2. Wire Mesh, Underground, Hardware Cloth in Box, and Hardware Cloth Beneath Site: ½" x ½" square opening, hot dipped galvanized wire after welded, 16 gauge wire diameter minimum.
- E. Corrugated Metal Panel: Shall be 26 gauge, 2-1/2" rib spacing, ½" rib height, 24" panel width, corners shall be rounded and all sharp edges shall be sanded smooth, as available from Gibraltar Building Products, or approved equal.
- F. Finish Hardware: Furnish items of finish hardware, gate frame, handles, cane bolts, caster wheels, automatic door closers, post bases, etc. required to complete the work and as shown on the plans. Hardware shall be exterior, heavy-duty grade, galvanized, powder coat gray color RAL 7001, as available from Tiger Drylac Powder Coatings. Metal angles shall be A36 steel. Door closers shall meet the maximum door opening force required by code.
 - 1. Door closer: Shall be Garden Gate Closer TB175 as available from Lockey USA, or approved equal.
 - 2. Door lock: Shall be Trilogy T2 DL2700 Electronic Keyless Access Lock, as available from Alarm Lock Systems, LLC, or approved equal.
- G. Rough Hardware:
 - i. Furnish items of rough hardware, connections, bolts, etc., required to complete the work. All screws and miscellaneous fittings shall be hot dipped, galvanized steel in accordance with ASTM A 153-00, unless noted otherwise (stainless steel and aluminum alloy acceptable). Finishing nails shall be used on all visible nailings unless noted otherwise. Bolts shall be hot dipped galvanized.
 - ii. Nails: Common wire hot-dipped galvanized. Use ring or spiral shank nails for floor sheathing. Special nailing requirements shall be as indicated.
 - iii. Bolts: Standard mild steel, square or hexagonal head machine bolts with matching nuts and cut washers, or carriage bolts with square or hexagonal nuts and cut washers as indicated. Where exposed to view, use only hexagonal head fasteners and matching nuts, and limit

projection of bolt beyond face of nut to 1/2 inch.

- H. Powder Driven Fasteners: Provide fastener systems complete with all necessary washers, nuts and other appurtenances. Provide one of the following acceptable products or equal product approved in accordance with Section 01600:
 - 1. Hilti, Inc.
 - 2. Powder Power Tool Corp.; "Drive-It"
 - 3. Ramset Fastening Systems; "Ramset"
- I. Header board: Shall be per plans.

PART 3 - EXECUTION

3.1 INSTALLATION

- A. Contractor shall be responsible for all necessary field measurements at the construction site after locations, orientations, and elevations have been established by City. All carpentry work shall be accurately fitted, vertical work shall be accurately fitted, vertical members installed plumb and evenly spaced, and end cuts made clean and square.
- B. Bolting: Drill bolt holes 1/32" oversize unless otherwise noted. Tighten all nuts when placed, retighten immediately before closing with finish material or completion of the structure. Do no final bolting until structure has been properly aligned. Set threads after final tightening.
- C. Washers: Mild steel washers shall be placed under the heads and nuts of all bolts.
- D. End Grain Sealant: Seal wood end grain for all rough carpentry with non-toxic waterproofing wax emulsion sealant.

END OF SECTION 06 40 00

SECTION 09 91 00 PAINTING

PART 1 - GENERAL

1.1 SCOPE

- A. Furnish and apply all paint and other finishes as shown and specified.
- B. Related work specified elsewhere:
 - 1. Asphalt Paving - Section 32 12 16
 - 2. Site Furnishings - Section 32 33 00
 - 3. Carpentry - Section 06 40 00

1.2 STANDARDS

- A. All work shall conform to the applicable requirements for Type II "Premium" Specifications as prepared by the Painting and Decorating Contractors of America, except as modified herein.
- B. The paint manufacturer's standard specifications will be considered as the minimum standard for the work.

1.3 SUBMITTALS

- A. Submit a complete list of all materials proposed for use. The list shall show the specific label name of each product for each coat of finish. After review by the Owner's Representative and City no deviation from the list will be permitted without further approval.
- B. Provide sample finishes on the actual surfaces to be painted to verify appearance. Approved samples will become the standard for the work.

1.4 DELIVERY, STORAGE & HANDLING

- A. Special care shall be taken in the handling of paint materials to prevent spillage and fire. Remove rags, waste, and empty containers from the site at the end of each work day.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. General: All materials shall be "first line" or best quality as manufactured by Kelly-Moore, Pratt & Lambert, Sherwin-Williams, Sinclair, Dunn-Edwards, Fuller-O'Brien, Olympic, Conrad Sovig, or approved equal. Mention of these manufacturers does not necessarily constitute approval of all of their products. Where a product is specified by name, it is intended to establish the quality required for that use.
- B. Painting and Finishing Schedule
 - 1. Storage Shed: Shall receive one coat of primer and a minimum of two coats of exterior grade, oil based high performance protective enamel paint, in Diamond Dust KM5297 for Siding Paint, and Aegean Mist KM4977 for Trim Paint, available from Kelly-Moore Paints or approved equal. Additional coats as required to produce opaque quality.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Take special care to prevent spilling paint materials on surfaces not intended to receive them.
- B. Verify that the work to be painted is in suitable condition to receive each coat of paint. Should the Contractor find surfaces and conditions unacceptable, he shall at once report such conditions to the City and cease operations on the portion of the work affected. Application of paint shall occur only upon acceptance of surface and working conditions, and the Contractor shall be held responsible for the results. Clean all surfaces before painting.
- C. All work shall be scraped, sandpapered, sandblasted, rubbed, or otherwise brought to a smooth surface before finish is applied. Fill all minor cracks and depressions, backfill and trim between edges of trim, and finish to a clean-cut edge.
- D. All metal, excepting prefabricated items and unless primed under other sections, shall be degreased with approved metal cleaner which will not affect the galvanized coat where it occurs.

- E. Pavement surfaces to receive paint shall be in condition to insure complete bonding of the applied material, and shall be subject to inspection and approval before such work commences.

3.2 APPLICATION

- A. Apply all finishes in strict accordance with manufacturer's recommendations. There shall be no perceptible difference in the shades of each successive coat of paint. No coat of paint shall be applied before a previous coat is thoroughly dry.
- B. Paint shall be applied on dry surfaces only, and worked thoroughly into all joints, crevices, and open spaces.
- C. Painting shall be done at such times as approved, but no painting shall be done during wet weather, or when any surface is damp or moist.
- D. Painting shall be done in a neat, workmanlike manner by skilled mechanics, and shall be uniform in appearance, smooth, free from runs, sags, defective brushing and clogging of the lines and angles.
- E. Edges of paint adjoining other materials or other colors shall be sharp and clean without overlapping. After application, paint shall not run or sag and shall dry to the touch within 18 hours.
- F. Wherever complete and satisfactory coverage is not obtained, the Contractor shall apply additional coats at no expense to the City.
- G. Painter shall repair any scratches, chips, etc. that occur during construction.
- H. All hardware shall be pre-painted on both sides prior to use.

3.3 CLEANING

- A. Take special care to keep surrounding surfaces clean as the work progresses, and upon completion carefully remove all paint from surfaces not intended to receive it. Use no materials or methods that will damage surfaces.

END OF SECTION 09 91 00

SECTION 31 22 00 EARTHWORK AND GRADING

PART 1 - GENERAL

1.1 SCOPE

- A. Perform all rough grading work as shown and specified including, but not necessarily limited to, stripping and stockpiling of native topsoil, site excavation and backfill for placement of hardware cloth beneath site, site grading for mulch surfacing, decomposed granite paving, garden raised planters, concrete pads and asphaltic concrete, and landscaped areas, including subgrade compaction.
- B. Related work specified elsewhere:
 - 1. Demolition - Section 02 41 13
 - 2. Carpentry – Section 06 40 00
 - 3. Trenching and Backfilling - Section 31 23 00
 - 4. Decomposed Granite Paving - Section 32 15 40
 - 5. Asphalt Pavement - Section 32 12 16
 - 6. Landscape Soil Preparation – 31 92 13
 - 7. Site Concrete - Section 32 13 13

1.2 STANDARDS

- A. Unless otherwise shown or specified, all materials and methods shall conform to the most current Section 19 Earthwork of the State of California, Department of Transportation, Standard Specifications (DTSS) as they reasonably apply to this work, except for measurement and payment requirements.

1.3 QUALITY CONTROL

- A. All excavation, placement and compaction of fill and preparation of subgrade shall be reviewed by the City. Contractor shall schedule work and notify City and Geotechnical Engineer three working days in advance of each portion of grading operations for their review, testing and approval. The Contractor shall cooperate with the City in performing these tests. All tests indicating conformance to project requirements shall be paid for by the City. Costs of retesting and re-inspection required as the result of inadequate, insufficient, or incomplete work by the Contractor shall be deducted from the contract amount.
- B. Compaction Test Method: Where referred to in these specifications, "compaction" or "relative compaction" shall mean the in-place dry density of soil

expressed as a percentage of the maximum dry density of the same material as determined by ASTM D-1557-02e1.

- C. The Contractor shall provide compaction testing as required to confirm compliance with these specifications and drawings. All costs of such testing will be borne by the City, except as specified in Paragraph 2.3 in Section 00 72 00 General Requirements.
- D. Contractor shall schedule a City inspection three (3) working days in advance following the completion of site excavation and prior to the commencement of backfill and finish grading.

1.4 LAYOUT AND GRADING CONTROL

- A. Grade the site to the tolerances shown. Vertical control is established by the benchmark indicated on the drawings.
- B. The Contractor shall engage the services of a City-approved Land Surveyor licensed in California to lay out the work. This surveyor shall certify that the completed work is done in a manner that the City can check for conformance as the work progresses.
- C. Tolerances: Site grading shall be to the elevations shown on the Drawings, plus or minus 0.1 foot vertically.
- D. Dewatering: No soil shall be compacted during periods of rain or when the ground is not drained of all free water. Soil that has been stockpiled and wetted by rain or by any other cause shall not be compacted until completely drained and until the moisture content is within the limits approved by the City.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Existing material may be used for fill after removal of all debris, and after being moisture-conditioned, if it meets the criteria in paragraph B below.
- B. Soil used for compacted fill shall be free of perishable organic material, and shall meet the following requirements:
 - 1. Physical: 100% passing 4 inch size, 10 to 75% passing the No. 200 sieve. Plasticity Index of 12 maximum when tested in accordance with ASTM D 4318-75.

2. Chemical: Salinity Limit (ECe) saturation extract of 4.0 sodium (SAR) limit of less than 8.0.
3. Boron: Saturation extract concentration less than 1.0 ppm.
- C. Minor quantities of material not meeting the above gradation may be mixed and blended with other on-site material if the resulting mixture conforms to the specifications. If the quantity of material not in conformance with the specifications becomes excessive in the opinion of the Geotechnical Engineer, it shall be removed from the site.
- D. Hardware Cloth Beneath Site: See Section 06 40 00, Carpentry, paragraph 2.1.D2.
- E. Topsoil: See Landscape Soil Preparation Section 31 92 13 for topsoil requirements.

PART 3 - EXECUTION

3.1 STRIPPING AND STOCKPILING OF NATIVE TOPSOIL

- A. All vegetation including the top one to two inches of roots shall be removed from areas to be graded. The remaining six to twelve inches of topsoil shall be stripped and stockpiled in sufficient quantities as required to provide a 6 inch layer of topsoil in all in-ground planting areas and topsoil in all raised planters, including the ADA planter.
- B. Subsoils (beneath the layer of existing topsoil) shall be excavated separately and disposed offsite.

3.2 HARDWARE CLOTH BENEATH SITE PLACEMENT

- A. Excavate soil from existing grade to install hardware cloth beneath site per plans. Overlap hardware cloth 6" min. and secure with S-hook wire clip, stainless steel, every 1'-0" per plans. Adjust depth of hardware cloth placement to accommodate irrigation mainline and fence footings per plan. Hardware cloth shall be placed beneath irrigation trenches within the fence boundary, per plans.

3.3 ROUGH GRADING

- A. Prior to commencement of site grading work the Contractor shall notify the City's Representative that the site has been cleared. The City's Representative shall have sufficient time to review the site. Site grading shall not commence

until the City's Representative has completed review of the site and the City has given approval to proceed.

- B. Perform all cut and fill required to bring the site to the grades indicated, with proper allowances for finish materials such as paving and base. Prior to placing new fill the exposed ground surface should be scarified to a depth of six inches (or greater as indicated on plans), brought to near optimum moisture content and compacted. Areas to be planted shall be compacted to 85 percent and areas to be paved shall be compacted to at least 95 percent relative compaction as determined from ASTM Test Method D 1557-78.
- C. Placement and Compaction: Approved fill material shall be placed in layers of six to eight inches in loose thickness and moisture-conditioned as necessary to achieve moisture content suitable for re-compacting. Fill material shall be compacted with equipment of such weight and design as necessary to obtain the specified compaction. Fill shall be compacted to 85 percent relative compaction in areas to be planted and at least 95 percent relative compaction in areas to be paved unless otherwise directed. In pavement areas, the upper 9 inches of subgrade shall have a minimum relative compaction of 95 percent. The resulting subgrade should be smooth and essentially unyielding. In planting areas, the upper 8 inches shall have a minimum relative compaction of 85 percent. Between successive lifts, the fill surface shall be scarified or otherwise processed to obtain satisfactory bonding between the fill lifts.
- D. Re-compaction: Where, in the judgment of the City's Representative, the moisture content is not suitable or insufficient compaction has been obtained, the fill shall be reconditioned and/or re-compacted to the specified density prior to placing any additional fill material. The Contractor shall be responsible for placing and compacting approved fill material in accordance with these specifications. If the Contractor fails to meet the compaction requirements, he shall reduce his rate of haul, furnish additional spreading, moisture conditioning and/or compacting equipment or make any other adjustments necessary to produce a satisfactorily compacted fill.
- E. All excess material and all material that is unsuitable for paving subbase or finish grading shall be disposed of off site at Contractor's expense and includes all testing and fees required by the disposal site.
- F. Where any marked or unmarked utility lines or other underground obstruction or piping may be encountered within the work area, notify the City or the Agencies or service utility companies having jurisdiction thereof, and take

necessary measures to prevent interruption of service (if live). Should such lines or service be damaged, broken, or interrupted through the Contractor's own negligence, those services shall be repaired immediately and restored by him at his own expense. Abandoned lines, meters and boxes, obstructions or piping, shall be removed, plugged or capped in accordance with the requirements and approval of the agencies affected.

- G. Rock Removal: All rocks eight cubic inches or larger shall be removed completely from the top 6 inch of subgrade prior to placement of topsoil in all planting areas. (See "Landscape Soil Preparation" for additional requirements.) All rocks not meeting criteria for fill material shall be legally disposed of off-site as the Contractor's own property.

3.4 EROSION CONTROL AND CLEAN-UP

- A. Spillage: The Contractor shall prevent spillage when hauling on or adjacent to any public street or highway. In the event that such occurs, the Contractor shall remove all spillage and sweep, wash or otherwise clean such street or highways.
- B. Dust Control: The Contractor shall take all precautions needed to prevent a dust nuisance to adjacent public and private properties and to prevent erosion and transportation of soil to adjacent properties due to work under this contract. Any damage so caused by the Contractor's work under this contract shall be corrected or repaired by the Contractor at no cost to the City. In the event the Contractor fails to take such precautions or make such corrections or repairs promptly, the City may take such steps as he may deem necessary and deduct the cost of the same from the monies due to the Contractor.
- C. Clean-up: The job site shall be kept neat and clear at all times, with all public walks swept clean at the end of each day, and all materials neatly stored. Upon completion of the work under this Section, remove immediately all surplus materials, rubbish and equipment associated with or used in the performance of this work. Failure to perform such cleanup operations within 48 hours of notice by the City shall be considered adequate grounds for having the work done by others at this subcontractor's expense.

END OF SECTION 31 22 00

SECTION 31 23 00 TRENCHING AND BACKFILLING

PART 1 - GENERAL

1.1 SCOPE

- A. Perform all structural excavation, trenching, and backfilling work as shown and specified including, but not necessarily limited to, footings and irrigation lines.
- B. Related work specified elsewhere:
 - 1. Earthwork and Grading - Section 31 22 00
 - 2. Irrigation - Section 32 84 00

1.2 STANDARDS

- A. Unless otherwise shown or specified, all materials and methods shall conform to Section 19 Earthwork of the State of California, Department of Transportation Standard Specifications (DTSS) as they reasonably apply to this work, except for measurement and payment requirements.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Backfill material shall consist of the same material as specified for general fill under Section 31 22 00 - Earthwork and Grading.
- B. General Backfill: Backfill material shall be approved by the City's Representative prior to its use. Excavated material and excess material from site grading may be re-used for backfilling and grading, provided such fill shall be homogeneous, free from rocks, rubbish, organic material, etc., and shall consist of fragments capable of being thoroughly crushed and consolidated into a dense, uniform compact fill, and shall meet the following requirements:

<u>Sieve Size</u>	<u>Percentage Passing</u>
1 inch	100
3/4 inch	95-100
No. 200	10-75
Plasticity index	12 maximum

PART 3 - EXECUTION

3.1 EXCAVATING AND BACKFILLING FOR TRENCHES

- A. Perform all necessary excavation, shoring, pumping and dewatering and backfilling required for the proper laying of all underground pipes and conduits.
- B. All piping in ground shall have a minimum cover of 1'-6", except as otherwise shown, and shall be laid in ditches dug true to grade and line, avoiding sharp breaks. Piping shall bear equally over its entire length at bottom of ditch. Rock or unstable material encountered at grade shall be replaced with sand fill to a depth of 6 inches below pipe.
- C. Backfill (non-drainage trenches): Fill trenches with excavated material in 6 inch to 8 inch uncompacted thick layers, compacted to 90% relative density. Backfill shall be moisture-conditioned to near-optimum in accordance with ASTM D 1557-02e1.
- D. Backfilling shall be commenced as soon as practical after subsurface work is installed and reviewed by the Engineer and approved by the City.
- E. No wood or debris shall be buried in any fill. The fill material shall be non-expansive, meeting the criteria of paragraph 2.1B of Section 31 22 00 – Earthwork and Grading.
- F. Provide shoring, excavation pumping and other requirements as necessary at excavations for points of connection.

3.2 STRUCTURAL EXCAVATION AND BACKFILL

- A. Structural Excavation: Make all excavation to the grades and elevations shown on the drawings, or to the subgrades required to obtain the finished grades shown thereon. Accurately cut footing trenches. Where footings are to be cut "neat", the trench or excavation width shall be increased by 2 inches from the dimensions shown on the drawings, so as to permit pouring footings against earth banks. If soil type or weather does not permit such excavations, excavate wide enough to permit full forming of footings. If any excavation is made below proper grade, the City shall be immediately notified, and the grade shall be restored in whatever manner the City directs, at no expense to the City. All excavation shall be kept free of standing water until concrete work, paving or

backfilling is complete. Shore and brace excavations when required to prevent cave-ins.

- B. Foundations from previous structures, underground utilities or other buried structures shall be removed in their entirety and replaced with compacted engineered fill.
- C. When zones of soft or saturated soils are encountered at the over-excavated levels during excavation and compaction, deeper excavation shall be required to expose firm soil. This shall be determined in the field by the City's Representative.

3.3 SURPLUS MATERIAL

- A. Any excavated material which proves to be unsuitable or which is not required for backfilling shall be removed from the immediate work area and disposed of off-site.

3.4 CLEANUP

- A. Upon completion of the work under this Section, remove immediately all surplus materials, rubbish and equipment associated with or used in the performance of this work. Failure to perform such cleanup operations within 48 hours shall be considered adequate grounds for having the work done by others at the Contractor's expense.

END OF SECTION 31 23 00

SECTION 31 92 13 LANDSCAPE SOIL PREPARATION

PART 1 - GENERAL

1.1 SCOPE

- A. Furnish and install all landscape soil preparation as shown and specified, including, but not necessarily limited to, the following: topsoil placement and planter box backfill, organic amendment and fertilizer placement, and finish grading.
- B. Related work specified elsewhere:
 - 1. Earthwork and Grading - Section 31 22 00
 - 2. Planting - Section 32 93 00

1.2 QUALITY CONTROL

- A. Reviews: Contractor shall specifically request at least two working days in advance the following reviews prior to progressing with the work:
 - 1. Completion of rough grading
 - 2. Verification of amendment incorporation depths
 - 3. Finish grade
- B. Certification: Written certificates stating quantity, type, and composition, weight and origin for all amendments and chemicals shall be delivered to the City's Representative before the material is used on the site.
- C. Soil Samples: Contractor shall provide a one-quart sample of the native topsoil to Waypoint Analytical, Inc. of San Jose, (408) 727-0330, for their testing for conformance to this specification. No material shall be delivered to the site, graded on-site, or otherwise modified until the City's Representative approves the material. All testing costs shall be paid for by the Contractor. Contractor shall allow for sufficient time for such testing prior to construction. Testing costs for the initial samples and costs for any additional samples due to non-compliance shall be paid for by the Contractor.
- D. Amendment Samples: Contractor shall provide a one-quart sample of each proposed amendment to Waypoint Analytical, Inc. of San Jose, (408) 727-0330, for their testing for conformance to this specification. No material shall be delivered to the site until the City's Representative approves the samples. Testing costs shall be paid for by the Contractor.

- E. Planting Areas: All areas to be planted, whether in container stock, by future gardeners, or otherwise, are defined as planting areas in these documents.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Native Topsoil: Shall be the existing surface layer of soil on site. This layer typically will be a different color and texture than the subsoil, and may be of varying thicknesses. The Contractor shall be responsible for reviewing the area limits and depths of native topsoil on site with the City's Representative.
- B. Fertilizer: Shall be determined from soils analysis results. For purposes of bidding only, assume the use of 6-20-20 commercial fertilizer, 20-10-5 planting tablets by Agriform International Chemicals, Inc., and iron sulfate.
- C. Organic Amendment: Shall be BFI super-humus compost, or approved equal.
1. BFI Super Humus Compost shall conform to:

- a) Gradation: A minimum of 90% of the material by weight shall pass a 1/2" screen. Material passing the 1/2" screen shall meet the following criteria.

<u>Percent passing</u>	<u>Sieve designation</u>
85-100	9.51 mm (3/8")
50-80	2.38 (No. 8)
0-40	500 micron (No. 35)

- b) Organic Content: A minimum of 50% based on dry weight and determined by ash method. A minimum of 250 lbs. organic matter per cubic yard of compost.
- c) Carbon to Nitrogen Ratio: Maximum 35:1 if material is claimed to be nitrogen stabilized.
- d) Soluble Salts: Soluble nutrients typically account for most of the salinity levels but sodium should account for less than 25% of the total. To avoid a leaching requirement, the addition of the compost shall result in a final ECe of the amended soil of less than 4.0 ds/m @ 25 degrees C. as determined in a saturation extract. Use the following table to determine the maximum allowable ECe (ds/m of saturation extract) of compost at desired use rate and allowable ECe increase.
- e) Moisture Content: 35-60%.

f) Contaminants: The compost shall be free of contaminants such as glass, metal and visible plastic.

g) Maturity: Physical characteristics suggestive of maturity include:

Color: dark brown to black

Odor: acceptable = none, soil like, musty or moldy
unacceptable = sour, ammonia or putrid

h) Particle Characterization: identifiable wood pieces are acceptable but the balance of material should be soil-like without recognizable grass or leaves.

PART 3 - EXECUTION

3.1 LIMITS AND GRADES

A. Grade Review: Prior to commencing soil preparation operations, Contractor shall request a review by the City's Representative to verify specified limits and grades of work completed to date and soil preparation work to commence. Contractor shall complete the rough grading as necessary to round the top and toe of all slopes, providing naturalized contouring to integrate newly graded areas with the natural topography. Finish grading under this section shall be completed in accordance with the grades indicated on the landscape drawings.

3.2 STRIPPING AND STOCKPILING OF EXISTING TOPSOIL

A. Excavation Areas: The native topsoil shall be stripped and stockpiled on-site in sufficient quantities to provide a six-inch layer throughout all in-ground planting areas and to backfill raised planters, including the ADA planter. Topsoil to be stripped and stockpiled shall be taken from the surface layer after all organic litter and foreign debris has been removed and properly disposed.

B. Existing Grade Unchanged: In those areas where grades are not proposed to be modified (areas of no excavation or fill) the native topsoil shall be left in place. All debris, as well as all rocks over 0.75 inches in diameter, shall be removed from the surface of planting areas.

3.3 SUBSOIL AND TOPSOIL PLACEMENT

A. A mixture of topsoil and subsoil shall be used for backfill beneath the hardware cloth in box. Only topsoil shall be utilized as backfill for raised planters.

Stockpiled excavated sub-soil shall be placed in three-inch layers to depths shown on drawings. Next, three-inch layers of topsoil shall be uniformly distributed over all planters and thoroughly incorporated into the top six inches of subsoil by ripping, scraping, or tilling to mix the stockpiled subsoil with the native subsoil into a homogeneous mixture.

- A. Existing Topsoil to Remain: In those planting areas where native topsoil is to be left in place, cross rip to a depth of ten inches. Then incorporate the amendments to a homogeneously blended soil depth of six inches.

3.4 ORGANIC AMENDMENT AND FERTILIZER INCORPORATION

(The following recommendation is for bidding purposes only. Refer to the horticultural soils report for actual quantities and fertilizers.)

- A. Materials and Rates: Materials determined from the soils test shall be uniformly distributed throughout all irrigated planting areas and incorporated to a homogeneously blended soil depth of twelve inches per raised planter. Assume per eighteen cubic yards of native topsoil the addition of:

6 cubic yards nitrogen stabilized organic amendment
30 pounds commercial fertilizer (6-20-20)
10 pounds iron sulfate

Note: Iron sulfate should be applied cautiously, avoiding contact with concrete, since permanent staining may result. Any such stained concrete shall be replaced at Contractor's expense.

3.5 PLANT PITS

- A. Plant Pit Preparation: Plant pits shall have their sides and bottoms loosened or otherwise broken to prevent glazed or compacted surfaces, and shall be as shown on the planting detail.

3.6 BACKFILL

- A. Backfill Material and Placement: Only unamended soil shall be used beneath the root ball; cultivate bottom of plant pit to improve porosity. Backfill around sides of rootball shall be the amended soil taken from adjacent prepared areas. Spread material excavated from plant pits onto adjacent areas as replacement. Should additional backfill be necessary, a mixture of one-third organic amendment/fertilizer mix and two-thirds topsoil may be used.

3.7 PLANT TABLETS

- A. Tablet Quantities: All container plants shall receive plant tablets as follows:
- | | |
|--------------------|----------------------|
| five-gallon plants | five 21-gram tablets |
|--------------------|----------------------|

Space the tablets evenly around the root ball halfway up backfill touching side of root ball. City's Representative may require excavation of up to 5% of all plants selected at random for conformance review.

3.8 FINISH GRADING

- A. Grading Operations: Contractor shall finish grade all irrigated planting areas unless otherwise noted, and shall remove all rocks and clods over one cubic inch to a depth of one inch below finish grade. All areas shall be smooth and uniformly graded. All erosion damage during the construction period shall be repaired by the Contractor.
- B. Finish Grades: Unless otherwise noted, all soil finish grades shall be one inch below finish grade of walks, pavements, and curbs.

END OF SECTION 31 92 13

SECTION 32 01 90 LANDSCAPE MAINTENANCE

PART 1 - GENERAL

1.1 SCOPE

- A. Work in this section includes the growing and maintenance operations necessary to establish the newly planted shrubs, and other plantings; to provide insect, rodent and disease control, and to maintain the irrigation system, and related construction elements.
- B. Related work specified elsewhere:
 - 1. Irrigation - Section 32 84 00
 - 2. Landscape Soil Preparation – Section 31 92 13
 - 3. Planting - Section 32 93 00

1.2 SUBMITTALS

- A. Soil Testing: Contractor shall collect one one-quart samples in the container planting areas of the in-place topsoil 20 days after completion of planting and submit to Waypoint Analytical, Inc. of Anaheim, (714) 282-8777, or approved equal, for maintenance period fertilizer recommendation. Test results shall be made available to the City's Representative. Sample shall be a representative composite taken from several planting areas. Cost of soil test shall be paid for by the Contractor.
- B. Herbicide/Fungicide/Insecticide: Submit a written recommendation from a State of California appropriately licensed individual along with complete product data from proposed manufacturer, for review by City Inspector and/or City's appropriately licensed individual.

1.03 SCHEDULE

- A. Work in this section will not begin until the irrigation audit is complete.
- B. Maintenance and Warranty Period: Shall be per General Conditions.
- C. Maintenance period shall be for a minimum period of thirty (30) calendar days after pre-final inspection.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Fertilizer: Used during the course of the maintenance period shall be determined by soils test required under Part 1 of this Section and that are on the list below. For bidding purposes only, assume the use of ammonium sulfate (21-0-0) at 5 lbs. per 1000 SF, minimum of two applications.
 - 1. Organic Materials Review Institute's Generic Materials List
 - 2. California Department of Food and Agriculture's Organic Input Materials
 - 3. U.S. Department of Agriculture's National Organic Program
- B. Water: During the course of construction and maintenance period water shall be paid for by the Contractor.
- C. Herbicide/Fungicide/Insecticide: Shall be a commercially available chemical recommended for this project and these plantings by a State of California appropriately licensed individual. The licensed individual shall review all planting, including but not limited to seed, sod, groundcovers, shrubs, and trees, the types and extent of soil preparation, the irrigation systems, drainage patterns, and other project characteristics to verify type, compatibility, and recommend the appropriate chemical(s) for use. Contractor shall be responsible for all overspray, spreading, runoff, plant health, and other impacts from the use of the chemical(s).

PART 3 - EXECUTION

- 3.1 TIME LIMITS: The maintenance period shall commence from the date of substantial completion of planting as defined in paragraph 3.6 below, and extend for a 30-day period thereafter, or until the acceptance of Final Completion.
- 3.2 FERTILIZER APPLICATION: Fertilizer(s) shall be applied per Waypoint Analytical, Inc. recommendations. For bidding purposes, assume initial application to be four weeks after planting and subsequent applications to be at 45-day intervals.
- 3.3 HERBICIDE APPLICATION: Herbicide shall not be used until all plant material has been planted a minimum of 20-days. All planting areas shall be kept weed-free by non-herbicide methods during this time period. Herbicide shall not be applied to any areas that are or have been seeded. Contractor must apply the material in conformance with the written recommendations of the State appropriately licensed individual.

- 3.4 **BASIC REQUIREMENTS:** All planting areas shall be kept weed-free at all times during the maintenance period. All pest and disease control shall be the Contractor's responsibility. All planting areas shall be kept at optimum moisture for plant growth. Settlement of soil and plants and soil erosion shall be repaired and areas replanted as required. Dying or deficient plants shall be replaced as soon as they become apparent.
- 3.5 **CITY'S RESPONSIBILITY:** Work installed under this contract that is damaged or stolen prior to written notice of Substantial Completion shall be repaired or replaced by the Contractor without cost to the City. After Substantial Completion and through the maintenance period, these damages and similar factors such as extensive litter, abuse and defacement shall be the City's responsibility to repair or replace and shall not be a part of this contract. No planting shall be guaranteed beyond the maintenance period, except as to conformance to specified species and variety, and except as to conditions specified under "Root Systems" of Landscape Planting, Section 02934.
- 3.6 **SUBSTANTIAL COMPLETION:** Shall be deemed as the time all major plantings, including groundcover, are installed, and when all other work is satisfactorily completed (with the exception of minor items to be completed as noted upon a checklist compiled by the City's Representative). Maintenance period shall not commence until work is deemed substantially complete by the City's Representative.
- 3.7 **FINAL REVIEW:** Contractor shall request a final review of the project at least five days in advance of the proposed date. Failure to request this notice shall automatically extend the date of completion. The maintenance period will continue until project is deemed complete.

END OF SECTION 32 01 90

SECTION 32 12 16 ASPHALT PAVING

PART 1 - GENERAL

1.1 SCOPE

- A. Work in this section includes the installation and furnishing of all aggregate base, asphaltic concrete (a.c.) paving, and related work thereto.
- B. Related work specified elsewhere:
 - 1. Earthwork and Grading - Section 31 22 00

1.2 STANDARDS

- A. Unless otherwise shown or specified, all materials and methods shall conform to the cited sections of the most current State of California, Department of Transportation Standard Specifications (DTSS).

1.3 SUBMITTALS

- A. Soil Sterilant: Submit written recommendation from a State of California appropriately licensed individual along with complete product data from proposed manufacturer, for review by the City's appropriately licensed individual.
- B. Aggregate Base: Submit laboratory reports for aggregate gradation, durability, sand equivalency, and other requirements conforming to DTSS Section 26, for review by City Inspector.
- C. Asphalt Pavement: Submit proposed mix design as prepared by mixing plant and other requirements conforming to DTSS Section 39-2, for review by City Inspector.

1.4 TOLERANCES

- A. Tolerances for subgrade, subbase and finished grade shall be as specified by DTSS Section 19 Earthwork except that Contractor shall deliver the full aggregate base and asphaltic concrete thickness shown. No combination of high and low tolerances that compromise the section will be permitted.

1.5 TESTING AND INSPECTION

- A. Contractor shall notify the City's Representative at the completion of the various stages of the operation as indicated below and shall allow two (2) working days for testing operations prior to proceeding with subsequent construction.
 - 1. After all rough grading is complete and subgrade has been prepared to receive aggregate base (insert (and/or subbase) if there is import fill on the site).
 - 2. After final placement and compaction of aggregate base or subbase and subgrade has been prepared to receive asphalt prime or other following operation.
 - 3. When paving equipment is at the site and paving operation is ready to start.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Soil Sterilant: Shall be a commercially available herbicide material recommended for this project by a State of California appropriately licensed individual. The licensed individual shall review the type of construction, soils, base, adjacent plantings, time and season of application, and other project requirements; verify compatibility; and recommend procedures for proper application. Contractor shall be responsible for all overspray, spreading, or runoff of material into adjacent areas.
- B. Aggregate Base: DTSS Section 26, Class 2, with 3/4 inch maximum size.
- C. Liquid asphalt for prime coat: DTSS Section 94.
- D. Asphaltic emulsion for tack coat: DTSS Section 94, SS1h.
- E. Asphalt Binder: DTSS Section 92, performance graded asphalt binder, PG 64-10 or PG-64-16.
- F. Mineral aggregates for HMA Types A & B plant-mixed asphalt: DTSS Section 39-2, maximum size 1/2 inch, medium gradation.

2.2 MIXES

- A. Proportioning and mixing of the asphaltic concrete shall conform to DTSS Section 39-2.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Verify that the subbase is properly compacted and at suitable grade for receiving aggregate base. Clear area to be paved of all debris and organic material. Recompact and regrade as necessary to place aggregate base.
- B. Before beginning base and paving work and during construction, take all steps necessary for protection of existing improvements. As the asphalt concrete is being placed, extreme care shall be taken not to discolor or damage the curbs, fences, or wall surfaces. If damage occurs, repair, and if satisfactory repair cannot be made, remove and replace the section as directed.
- C. Dispose of all excavated material as described in the Demolition Section 02 41 13 of the Technical Specifications.

3.2 INSTALLATION

- A. Soil Sterilant: Shall be applied to the subgrade soil of areas to be paved prior to baserock operations; uniformly applied according to the label. Contractor shall take all precautions necessary to avoid overspray, spreading, or runoff of material into adjacent areas.
- B. Place and compact aggregate base as specified for Class 2 aggregate base in DTSS Section 26-1.03. Verify grades to allow for finish paving.
- C. Clear aggregate base surface of all loose or unsuitable material. Apply prime coat in accordance with DTSS Section 94 and at a rate of 0.25 gallons per square yard. After the liquid asphalt has penetrated the surface, the excess shall be removed with sufficient sand to absorb the excess liquid asphalt. Remove excess sand.
- D. Apply tack coat in accordance with DTSS Section 39-2. Tack coat shall be applied in one application to existing pavement and planed surfaces and all vertical surfaces of existing pavement, curbs, gutters, catch basins, and construction joints, and other surfaces designated by the City's Representative. The tack coat shall be provided in sufficient quantity to produce a thin, uniform black, glossy coat of asphalt. Pools in unevenly distributed areas shall be redistributed by means of hand brooms.

- E. Before placing surfacing, additional prime coat or tack binder shall be applied to areas where the prime coat or tack coat has been destroyed.
- F. Asphalt concrete shall be transported, spread and compacted uniformly to a closed, smooth surface and a layer of uniform density, in accord with DTSS Section 39-2.
- G. Finish grades shall be as indicated, smooth and without sharp breaks and shall allow the pavement to drain. Upon completion of the paving, flood the area as directed by the City's Representative. The Contractor shall be required to reconstruct any low areas as directed. Finish grades that allow ponding or puddling of water will not be accepted.

3.3 CLEAN UP

- A. Upon completion of the work under this section, remove immediately all surplus materials, rubbish and equipment associated with or used in the performance of this work. Failure to perform such clean-up operations shall be considered adequate grounds for having the work done by others at the Contractor's expense.

END OF SECTION 32 12 16

SECTION 32 13 13 SITE CONCRETE

PART 1 - GENERAL

1.1 SCOPE

- A. Furnish and install all concrete as shown and specified. This work includes, but is not necessarily limited to concrete pavement, threshold, footings, and miscellaneous items.
- B. Related work specified elsewhere:
 - 1. Earthwork and Grading - Section 31 22 00

1.2 STANDARDS

- A. Unless otherwise shown or specified, all materials and methods shall conform to the appropriate current sections of:
 - 1. The State of California, Department of Transportation Standard Specifications (DTSS) sections 52, 73 and 90 except for measurement and payment requirements.
 - 2. Applicable ASTM Specifications as they reasonably apply to this work, except for measurement and payment requirements.
 - 3. American Concrete Institute (ACI), current standards.

1.3 TOLERANCES

- A. Tolerances for subgrade, subbase and finished grade shall be as specified by DTSS except that Contractor shall deliver the full aggregate base and concrete thickness shown. No combination of high and low tolerances that compromise the section will be permitted.
- B. Concrete Final Finishes: The Contractor shall demonstrate to the satisfaction of the City and the Owner's Representative that he, or his subcontractor, possesses sufficient skills and experience to perform the work. Photographs and/or site visits of past work may be required to supply this information. A 3'x3' sample of the broom finish concrete pavement shall be poured and finished at the site for City's review prior to commencing concrete pouring. Once the samples have been reviewed, the Contractor shall meet or exceed that quality of finish in all subsequent work. Contractor shall be responsible for removal of the samples at the completion of the work.

- C. Submittals: The following shall be submitted by the Contractor to the Engineer in accordance with the applicable portions of the referenced specifications:
 - 1. The proposed mix design, giving the brand of cement, type, gradations and source of aggregates, water/cement ratio, mix proportions, and unit weight.
 - 2. Manufacturer's literature for admixtures, embedded items, liquid membrane-form curing compound and non-shrink grout.
 - 3. Certification that materials are in compliance with specification requirements.
 - 4. Method of transporting and placing concrete.

1.4 JOB CONDITIONS

- A. Weather Limitations: Construct concrete surface course only when atmospheric temperature is above 40 degrees F., when the underlying base is dry, and when weather is not rainy.
- B. Grade Control: Establish and maintain the required lines and grades, including cross-slope during construction operations. All concrete shall slope to drain with no ponding of water.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Forms and Reinforcing: Per section 52.
- B. Concrete: Shall conform to Section 90 of the DTSS "Minor Concrete".
 - 1. Cement: Type II modified conforming to ASTM-C-150-02a.
 - 2. Aggregate: Shall not be less than 3/8" or more than 1 inch in size.
 - 3. Compression strength at 28 days to be a minimum 3,000 p.s.i.
- C. Color Admixture:
 - 1. Add Hi-con black at a rate of 1/8 lb. per sack.
- D. Cleaning Agents: As required.
- E. Aggregate Base: Class II per (DTSS).
- F. Expansion Joint Filler: Shall be "Fibre" Joint, manufactured by W.R. Meadows Seal Tight and conforming to ASTM D-1571, or approved equal.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Clear area to be paved of all debris and organic material. Recompact and regrade as necessary prior to placement of concrete. Verify that the subgrade and/or aggregate base is properly compacted and at suitable grade.
- B. Before beginning paving work and during construction, take all steps necessary for protection of existing improvements. As the concrete is being placed, extreme care shall be taken not to discolor or damage any improvements. If damage occurs, repair same, and if satisfactory repair cannot be made, remove and replace the section as directed.
- C. Formwork and Reinforcement:
 - 1. Assure that excavations and formwork are completed.
 - 2. Check that reinforcement is secured in place.
 - 3. Verify that anchors, expansion joint material, and other embedded items are secured in position.

3.2 INSTALLATION

- A. Finishes
 - 1. Broom Finish: Provide a light broom finish with strokes perpendicular to direction of travel along walks and parallel to length of threshold.

- 3.3 CLEAN UP: Upon completion of the work under this section, remove immediately all surplus materials, rubbish, and equipment associated with or used in the performance of this work.

END OF SECTION 32 13 13

SECTION 32 15 40 DECOMPOSED GRANITE PAVING

PART 1 - GENERAL

1.1 SCOPE

- A. Furnish and install all stabilized decomposed granite paving as shown and specified.
- B. Related work specified elsewhere:
 - 1. Earthwork and Grading – Section 31 22 00
 - 2. Site Concrete - Section 32 13 13

1.2 QUALITY CONTROL

- A. Standards: Unless otherwise shown or specified, all materials and methods shall conform to the appropriate current sections of:
 - 1. The State of California, Department of Transportation Standard Specifications (DTSS) Section 20-5.
 - 2. Applicable ASTM Specifications as they reasonably apply to this work.
- B. Tolerances: Tolerances for subgrade, subbase, and finish grade shall be as specified by DTSS except that Contractor shall deliver the full decomposed granite thickness shown. No combination of high and low tolerances that compromise the section will be permitted.

1.3 SUBMITTALS

- A. Soil Sterilant: Submit written recommendation from a State of California appropriately licensed individual along with complete product data from proposed manufacturer, for review by City Inspector and/or City's appropriately licensed individual.
- B. Decomposed Granite: A one-quart sample with supplier and source clearly indicated of decomposed granite to be used shall be submitted to the City's Representative for approval prior to delivery to the site.
- C. Mixing Facilities: Method or supplier source for paving product shall be submitted to the Engineer with sufficient notice so inspection of batching and mixing operations can be made.

- D. Stabilizer: Submit product data.
- E. Reviews: Contractor shall stake and layout all paving areas for review by the City's Representative prior to excavation.
- F. Samples: The Contractor shall demonstrate to the satisfaction of the City's Representative that he or his subcontractor possesses sufficient skills and experience to perform the work in all aspects required. A five-square-foot sample of decomposed granite paving shall be installed at the site for review and approval by the City's Representative. The Contractor shall meet or exceed that quality of work in all subsequent work. Contractor shall be responsible for the removal of the sample at the completion of work.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Soil Sterilant: Shall be Preen Natural Vegetable Garden Weed Preventer or approved equal, produced by Lebanon Seaboard Corporation, 1-800-233-1067, as available from Home Depot. Soil sterilant shall be suitable for use in crop and edible gardens. Sterilant shall prevent weeds by bonding with the soil and preventing weed seeds from forming roots. The ingredients shall biodegrade into soil elements and shall not harm humans, animals, or water sources.
- B. Decomposed Granite: Decomposed granite, hereafter referred to as "DG", shall be Gold Track Fines as available from TMT Inc. 1996 Oakland Rd, San Jose, CA 95131-1696, (408) 432-9040, or approved equal. Material must also conform to the following:

<u>Sieve Size</u>	<u>Percent Passing</u>
3/8"	100%
No. 4	85% - 95%
No. 8	75% - 95%
No. 30	35% - 55%
No. 20	10% - 20%

The yellow-brown color, inherent to Gold Track Fines type DG, is a requirement for this material. The contractor shall obtain the approval of the Engineer in writing of the DG he proposes to use, prior to delivery to the site.

- C. Stabilizer: Stabilizer shall be PHP Organic Aggregate Binder, or equal, and added to the DG at the rate of 15 lbs per ton of DG.

PART 3 - EXECUTION

3.1 INSTALLATION

- A. Soil Sterilant: Shall be applied to the subgrade soil of areas to be paved prior to paving operations; uniformly applied per manufacturer's recommendations; minimum rate of 20 lbs./1000 square feet and watered with a minimum of 3 gallons/100 square feet. Contractor shall take all precautions necessary to avoid spray onto or runoff into planting areas or other surfaces.
- B. Immediately prior to placing the decomposed granite, the subgrade shall be moistened. The decomposed granite shall be deposited in such a manner as to minimize the necessity for spotting, picking up, or otherwise shifting the decomposed granite. The decomposed granite shall be leveled by raking and compacted by use of a light roller.
- C. Fill in any low spots or cracks with additional decomposed granite.
- D. Finished surface of decomposed granite pavement shall meet ADA compliant standards of firmness and stability per CBC 11B-302.

3.2 GRADES

- A. The finish grades of the decomposed granite paving shall conform to the lines and grades on the drawings and allow for drainage.

3.3 CLEAN-UP

- A. All waste produced as a result of decomposed granite paving construction shall be removed from the site and disposed of legally. All excess decomposed granite shall be removed from planting areas.

END OF SECTION 32 15 40

SECTION 32 33 00 SITE FURNISHINGS

PART 1 - GENERAL

1.1 SCOPE

- A. Furnish and install all site furnishings, including but not necessarily limited to, benches, tables, entry sign, storage shed, and ADA raised planters.
- B. Related work specified elsewhere:
 - 1. Irrigation - Section 32 84 00
 - 2. Site Concrete - Section 32 13 13
 - 3. Carpentry - Section 06 40 00

- 1.2 **ACCEPTANCE:** Prior to the purchase of the items and within five days of the award of the contract, the Contractor shall supply the Owner's Representative with samples of the finishes for approval by the City. No materials for this section shall be purchased until such approval is granted.

- 1.3 **CERTIFICATION:** Delivery schedules shall be verified and certified in writing to the Owner's Representative within ten days after the project commences.

1.4 SUBMITTALS: Submit catalog information for items:

- A. Bench
- B. Table
- C. Entry Sign
- D. Occupancy Sign
- E. Storage Shed
- F. ADA planter
- G. Rain Chain
- H.

PART 2 – PRODUCTS

2.1 MATERIALS

- A. Bench: Shall be Dumor Bench 34, 6' length, IPE, metal parts to be powder coated black, with end and center armrests, surface mounted, as available from Ross Recreation, 100 Brush Creek Road, Suite 206, Santa Rosa, CA 95404, (855) 892-3240, or approved equal.

- B. Table: Shall be Dumor Table 75, 8' length, Douglas Fir, ADA, surface mounted, as available from Ross Recreation, 100 Brush Creek Road, Suite 206, Santa Rosa, CA 95404, (855) 892-3240, or approved equal.
- C. Entry Sign: Per plans.
- D. Occupancy Sign: Per plans.
- E. Storage Shed: Shall be Tuff Shed, Premier Ranch, 8'Lx8'Wx8'10"H, Double Shed Door 3'x6'-2", 16"x8" Wall Vent white color, Autumn Brown 3 Tab Roof, as available from Tuff Shed, 3590 Snell Ave, Suite 20, San Jose, CA 95136, (408) 935-8833, or approved equal. One (1) year minimum warranty period.
 - 1. Paint: Siding Paint shall be Diamond Dust KM5297, Trim Paint shall be Aegean Mist KM4977, as available from Kelly-Moore Paints, or approved equal.
- F. ADA raised planter: ADA Compliant Outdoor Raised Garden Bed – Red Cedar – 47" L x 45" W x 24" to 30" H, finish to be natural, unpainted finish, as available from Accessible Gardens, 2 Cleo Court, Westerly, RI, 02891, (401) 290-7870, or approved equal. All posts to be surface mounted to concrete footings.
- G. Rain Chain: Per plans.

PART 3 - EXECUTION

- 3.1 LAYOUT: Prior to commencing installation, Contractor shall stake layout and request a review by the Owner's Representative to determine adjustments on site from locations shown on drawings.
- 3.2 INSTALLATION:
 - A. All site accessories shall be installed per manufacturer's specifications.

END OF SECTION 32 33 00

SECTION 32 84 00 IRRIGATION

PART 1 - GENERAL

1.1 SCOPE

- A. Work in this section includes installation of a garden watering system and automatic irrigation system, including excavation for points of connection, trenching, piping, equipment, electrical components and incidentals related thereto.
- B. Related work specified elsewhere:
 - 1. Trenching and Backfilling – Section 31 23 00

1.2 QUALITY CONTROL

- A. Standards: Unless otherwise shown or specified, all materials and methods shall conform to section 20-2 of the State of California Department of Transportation Standard Specifications (DTSS) as they reasonably apply to this work except for measurement and payment requirements.
- B. All irrigation shall be provided and performed in accordance with the current City of Cupertino Standard Details. Wherever these plans and the City Standards conflict, the higher quality standard or specification will apply.
- C. Reviews: Contractor shall specifically request the following reviews prior to progressing with the work:
 - 1. Layout of system.
 - 2. Points-of-connection excavation.
 - 3. Trenching and pipe assembly.
 - 4. Coverage adjustment of all heads and valve box installation.
 - 5. Operation of system.
 - 6. Final Completion

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Quality: All materials shall be new and the best quality available unless otherwise specified. All materials shall be clearly marked by manufacturer on all material, containers, or certificates of contents for inspection.

- B. Plastic Pipe and Fittings: All mainline pipe shall be polyvinyl chloride (PVC) Schedule 80, all laterals shall be Class 200 PVC pipe; solvent weld fittings, if used, shall be Schedule 40, or Schedule 80 as called for on details. Solvent for piping shall be as recommended by manufacturer. All pipe shall be clearly labeled with manufacturer type and specification numbers.
- C. Control Wire: Type UF, 600 v. insulation, minimum size #14, copper, common to be white, valve control wire to be red or black, U.L. approved for irrigation control use; splices shall be "Scotch-Lok" seal pack, or equal.
- D. Valve Boxes: Precast concrete or plastic of type and size indicated; free of all cracks, chips or structural defects. Boxes located in pavement (asphalt or concrete) and/or subject to vehicular traffic shall be concrete and have heavy duty steel covers. Boxes shall be sized to provide a 4" minimum clearance around the irrigation equipment inside the box, excluding all pipes and fittings.
- E. Irrigation Equipment: Refer to drawings. Any desired substitutions require submittals in duplicate for specific written approval.
- F. Thread Sealant: Permatex Thread Sealant, part #14H, white in color.
- G. Submeter: Shall be Neptune T-10 meter, measuring in CCF, 2" size, or approved equal. Install per manufacturer's recommendations.
- H. Shrub bubbler: Rainbird 1401 series, 1 bubbler per shrub, or approved equal.
- I. Hose Bibb: Damm 22319 ¾" brass twin shut off valve, or approved equal.
- J. Hose Hanger: Hampton Bay heavy-duty wall-mounted hose hanger, 12-gauge steel with powder coated tan color finish, as available from The Home Depot.

PART 3 - EXECUTION

- 3.1 GRADING: Contractor shall be responsible for installing all irrigation features to their finished grade and at depths indicated. All rough grading shall be completed before trenching commences.
- 3.2 LAYOUT AND TRENCHING: All features of the irrigation system shall be staked and pipe alignments marked prior to trenching for review by the Engineer.
- 3.3 BACKFILLING: Do not cover joints until system has been reviewed by the Engineer. Backfill with damaging rocks and debris shall not be permitted. Compact all backfill and

eliminate settlement. Previously prepared soil is to be replaced as the top six inches of backfill.

- 3.4 **FABRICATION:** Snake pipe from side to side when trench exceeds thirty feet in length. All manifolds shall be neat, orderly, and constructed for ease in maintenance operations. Construct manifolds to allow valve boxes to be parallel to each other and to adjacent walls, walks, curbs, and buildings. Cuts and joints shall be free of burrs, smooth, and minimum in quantity. All pipe above finish grade shall be galvanized unless noted otherwise.
- 3.5 **PIPELINES:** All pipelines shown parallel on the drawing may be installed in a common trench. Where pipelines are shown parallel or adjacent to shrub or groundcover areas, they shall be installed in these areas. All changes in depth of pipe shall be accomplished using 45-degree fittings.
- 3.6 **TESTING:** Test mainline at 125 psi for a minimum of eight (8) hours prior to backfill of any irrigation system elements. No signs of leaking shall be considered acceptable. Test and repair as necessary until satisfactory test conditions are obtained.
- 3.7 **CONTROL WIRE:** Install control wire in pipe trenches wherever practical. Tape to underside of pipe every ten feet. Loop wire every 20 feet. Splices shall occur in valve boxes only and shall be accomplished utilizing approved connectors. All wire shall be installed below or level with the bottom of adjacent pipes. All wiring above finish grade shall be enclosed in steel conduit. Splices shall be installed in junction boxes.
- 3.8 **FINISH GRADE:** Unless otherwise noted, all heads shall be set at finish grade and on double or triple swing joints as called for on drawings. The top of all valve boxes shall be flush with finish grade.
- 3.9 **RECORD DRAWING:** Contractor shall regularly update a print of the system and any changes made to the system throughout the project. Features below ground shall be indicated with at least two measurements from surface features such as walks, building, or sprinkler heads. All changes shall be recorded on this plan before trenches are backfilled. The record drawing shall be completed and submitted to City before final payment shall be made for work installed.
- 3.10 **FINAL REVIEW:** Contractor shall request a final review of the project at least five days in advance of the proposed date. Failure to request this notice shall automatically extend the date of completion.

END OF SECTION 32 84 00

SECTION 32 93 00 PLANTING

PART 1 - GENERAL

1.1 SCOPE

- A. Furnish and install all container plantings, mulch, header board, and related work thereto.
- B. Related work specified elsewhere:
 - 1. Landscape Soil Preparation - Section 31 92 13
 - 2. Landscape Maintenance - Section 32 01 90

1.2 REFERENCES

- A. Interpretations of plant names and descriptions shall reference the following documents. Where the names or plant descriptions disagree between the several documents, the most current document shall prevail.
 - 1. USDA – The Germplasm Resources Information Network (GRIN)
<http://www.ars-grin.gov/npgs/searchgrin.html>
 - 2. Manual of Woody Landscape Plants; Michael Dirr; Stipes Publishing, Champaign, Illinois; most current edition.
 - 3. New Sunset Western Garden Book, Oxmoor House, most current edition.
- B. ANSI American Standard for Nursery Stock
- C. Federal, State, and County laws requiring inspection for plant disease and insect control.

1.3 QUALITY CONTROL

- A. Reviews: The Contractor shall specifically request the following reviews prior to progressing with the work:
 - 1. Plant material approval
 - 2. Plant layout
 - 3. Finish grade
 - 4. Substantial completion
 - 5. Final completion

1.4 SUBMITTALS

- A. Plant Material: Within ten (10) days after award of contract, Contractor shall submit notice to the City's Representative certifying the quantity and species of plant material ordered, the nursery supplying the material, any plant material unavailable at the time, and proposed plant substitutions. No plants shall be ordered or delivered prior to written acceptance by the City Representative.
- B. Mulch: Name of supplier and one quart-sized sample.
- C. Certificates: All plant materials shall meet the specifications of Federal, State, and County laws requiring inspection for plant diseases and insect infestations. Inspection certificates required by law shall accompany each shipment, invoice, or order of stock, and when such plants arrive at the site of work, the certificate of inspection shall be filed with the City's Representative.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Nomenclature and Labels: Plant botanical names shall conform to current literature noted in section 1.2. All plants of each clone, species, and cultivar shall be delivered to the site labeled with their full botanical names. Every plant species shall be labeled with no less than one label for every ten plants of a species.
- B. Quality: Minimum quality of all plant material shall conform to prevailing published specifications of the California Association of Nurserymen and the American Association of Nurserymen's American Standard for Nursery Stock unless otherwise indicated. Additional specifications shall be indicated on the drawings.
- C. Quantities: The quantities shown on the plant list and in labels are for the City's Representative's use and are not to be construed as the complete and accurate limits of the contract. Contractor shall furnish and install all plants shown schematically on the drawings. Any unlabeled plants shall be considered as the smaller size shown for that type on the drawings.
- D. Root Systems: All container-grown stock shall be grown in its container for at least six months prior to its planting. Contractor shall allow one percent of the

quantity of plants for removal and inspection. Any plant material, within one year following the final acceptance of the project, determined by the City's Representative to be defective, restricted, declining or otherwise deficient due to abnormal root growth, shall be replaced by Contractor to the equal condition of adjacent plants at the time of replacement.

- E. Health: Foliage, roots and stems of all plants shall be of vigorous health and normal habit of growth for its species. All plants shall be free of all diseases, insect stages, burns, or disfiguring characteristics.
- F. Untrue Species: All plant material, within two years following the final acceptance of the project, determined by the City's Representative to be untrue to the species, clone, and/or variety specified, shall be replaced by the Contractor, to the equal condition of adjacent plants at the time of replacement.
- G. Mulch: Except as otherwise noted below, mulch shall be walk-on bark, free of disease, invasive weeds and seeds. Available from Lyngso Garden Materials, 345 Shoreway Road, San Carlos, CA 94070, (650)364-1730). Maximum 3" grind.
- H. Headerboard: Shall be per plans.

PART 3 - EXECUTION

3.1 GENERAL

- A. Plant Material Approvals: Before planting operations commence, all or a representative sampling of plant material shall be reviewed at the site by the City's Representative. Defective plants installed without such review shall be removed from the site upon request by the City's Representative and an acceptable plant substituted in its place.
- B. Storage and Handling:
 - 1. Plant materials shall be protected and maintained in good condition. Bare root and balled materials shall be watered regularly and placed in a cool area. Plant material shall be protected at all times from animal damage, vandalism, drought damage, wind damage, frost damage, toxic irrigation water, or any other condition that would damage or reduce the viability of the plants. Plants shall be kept moist at all times and shall be completely watered twelve (12) hours or less before planting and shall be moist when installed.

- C. Layout: Only those plants to be planted in any single day shall be laid out. Locations of all plants shall be reviewed prior to planting. Plants installed without this review shall be transplanted as directed by the City's Representative.
- D. Protection of Plants: Contractor shall maintain all plant material in a healthy growing condition prior to and during planting operations. Contractor shall be responsible for vandalism, theft and damage to plant material until the commencement of the maintenance period.
- E. Root Systems: Contractor shall be responsible for inspection of all root systems on plant materials. Inspection shall include, but not be limited to, checking for rootbound stock, encircling roots at the perimeter of the container, evidence of girdling roots, and other defective root conditions. Such inspections shall include the complete removal of soil from one percent of plant material containers, or at least one plant from each nursery and each plant type. Contractor shall cut defective or potentially defective girdling, rootbound, and encircling roots and spread the root system into the surrounding backfill. Plants with excessively defective root systems shall be rejected by the Contractor.
- F. Pruning: Contractor shall do no pruning without the specific approval of the City's Representative. Plants pruned without approval shall be replaced by the Contractor, if required.
- G. Basins: Construct basins as necessary to water plants. Remove basins from all plants under a permanent irrigation system prior to final inspection and finish grade the planting area. Basins for plants to be hand-watered shall remain in place. Basin bottoms shall drain to berm away from plant stem.
- H. Plant Pits, Backfill and Finish Grading: See Soil Preparation Section 31 92 13 for materials and installation requirements.
- I. Cleanup: After completion of all operations, Contractor shall remove all trash, excess soil and other debris. All walks and pavement shall be swept and washed clean, leaving the entire area in a neat, orderly condition.

END OF SECTION 32 93 00