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END OF SECTION

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NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the City of Sausalito (“City”), California, acting through its City Council, hereinafter referred to as the City or City of Sausalito, will accept sealed bids for the award of the contract for the Work described in the Plans, Specifications, and Contract Documents prepared for the Robin Sweeny Park Improvements Project. Such sealed bids shall be received at the Office of the City Clerk of the City of Sausalito at 420 Litho Street until **2:00 PM Tuesday December 22, 2015**, at which time they will be publicly opened and read. On a date to be determined later, such bids shall be tabulated and submitted to the City Council for consideration and action consistent with the provisions of Public Contract Code Division 2, Part 3, Chapter 1, Article 4.

GENERAL DESCRIPTION OF WORK: The work includes but is not limited to: dust and noise control, tree protection and transplanting, site preparation and demolition, staking, clearing and grubbing, earthwork, trenching, erosion control, subgrade preparation, drilled piers, water systems, landscape drainage system, landscape brick masonry, site carpentry, concrete, paving, non-infill synthetic turf, rubberized surfacing for playgrounds, play equipment, signage, chain link fencing, ornamental fencing, site furnishings, electrical work, precast concrete posts with lights, graffiti resistant coatings, handrails and railings, potable water line and drinking fountain, irrigation, planting, and planting establishment period. Bid documents contain the full description of the Work.

PRE-BID MEETING: Time: **10:00 a.m., Tuesday, November 24, 2015**. Location: City of Sausalito Conference Room, 420 Litho Street, Sausalito, CA 94965. Submit all questions in writing to Loren Umbertis, telephone 415-289-4113 and email lumbertis@ci.sausalito.ca.us.

BIDDERS' REQUIREMENTS: Each Bid shall be made in accordance with the Plans, Specifications and Contract Documents prepared therefore, available at the Office of the City Engineer. Copies of Contract Documents are available for public inspection at the City of Sausalito, where they may be obtained for a non-refundable \$50.00 charge. Contract Documents will be mailed for an additional charge of \$10.00 per set. Plans will be released as full sets only, no partial sets will be provided. Digital copies of the plans and specifications will be available on the City website at <http://www.ci.sausalito.ca.us/index.aspx?page=2057>.

Bids shall be submitted only upon proposal forms included in the bid documents. The City of Sausalito will make a bid selection based on lowest responsive, responsible bidder whose base Bid and alternate(s) as listed in Section 00300, **Bid Form**, yields the lowest total Contract price. Selection of any or all alternates shall be at the sole discretion of the City. The City, however, reserves the right to reject any or all Bids, and to waive any informality in Bids received.

Bidders shall read and review the Bid Documents, including the full Notice Inviting Bids, Specification Section 00010, carefully and shall familiarize themselves thoroughly with all requirements. Each Bid must conform and be responsive to the invitation, the Plans and Specifications, and all documents comprising the pertinent Contract Documents. Each Bid shall be presented under sealed cover and shall be accompanied by a certified check, cashier's check, cash or bidder's bond, made payable to the City, in an amount not less than ten (10) percent of the Bid. The said check shall be given as a guarantee that the Bidder will execute the Contract in conformity with the form of agreement contained within the Contract Documents, and will furnish bonds and insurance policies as specified within ten (10) days after notification of the award of the Contract to the successful Bidder. Any Bid not accompanied by a Bid Security may be rejected.

All Bids must be addressed to the City Engineer of the City of Sausalito and shall bear the title or name of the work to be constructed.

The successful Bidder will be required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which this public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work shall be paid to all workers employed on this public work. Pursuant to Labor Code, Subsection 1773, the general prevailing rate has been determined by the California Director of the Department of Industrial Relations and copies of such determination are on file in the office of the City Engineer of the City of Sausalito and will be made available to any interested party on request. A copy of these rates shall be posted at the job site by the Contractor. (See California Labor Code sections 1770, 1771, 1772, 1773, 1773.1 and 1773.2.)

Bids will only be accepted from a contractor who is licensed in accordance with the provisions of Chapter 9, Division III of the California Business and Professions Code (BPC). The license required to perform this project is a CLASS "A" (GENERAL ENGINEERING) or is a CLASS "B" (GENERAL BUILDING) (BPC Subsection 7000 *et seq.*; Subsection 7028.15).

The time allowed for Substantial Completion of the project is **one-hundred and fifty (150) Consecutive Calendar Days** after the start date established in the NOTICE TO PROCEED for the commencement of Contract Time. LIQUIDATED DAMAGES for the period of time that any portion of the Work remains unfinished after the time fixed for Substantial Completion will be **Two Thousand Five Hundred Dollars (\$2,500.00) PER CALENDAR DAY.** Bidders should have fully inspected the project site in all particulars and become thoroughly familiar with the terms and conditions of the Contract Documents and local conditions affecting the performance and costs of the work prior to submitting a bid. Submission of a Bid by Bidder warrants that Bidder has visited the site of the Project and is thoroughly familiar with the work required of the Contract Documents.

A City of Sausalito Encroachment Permit shall be required for work, or staging of equipment in the public right of way and the Encroachment Permit fee shall not be charged to the successful Bidder. A Sausalito Business License is required prior to mobilization. Information about Business Licenses can be found on the City's website: <http://www.ci.sausalito.ca.us/Index.aspx?page=127>.

The successful Bidder will have the opportunity to enter into a teaming agreement with the City. Teaming consists of a voluntary effort by all parties to develop joint goals and establish a

cooperative rather than adversarial atmosphere while executing the Contract. The objective of teaming is effective completion of the work on schedule, within budget, and in accordance with the Contract Documents. Teaming shall commence and be conducted in accordance with industry practice.

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

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

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

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

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

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

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

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

ENGINEER'S ESTIMATE: The Engineer's estimate of construction costs for this project is \$1,500,000.

BONDS: Upon award of the contract, the successful bidder shall furnish a bond for faithful performance in the amount of one hundred percent (100%) of the total bid; it shall also furnish a labor and material bond to secure the payment of all claims of labor and material in the amount of one hundred percent (100%) of the total bid. Such bonds shall be secured from a surety company satisfactory to the City of Sausalito. No bid or bid security may be withdrawn for 60 calendar days after the bids are opened.

Payment and Performance Bonds are required to be filed and approved by the City Engineer before the Contractor begins the Work.

Securities eligible for substitution of Bonds shall be limited to those listed in Government Code Section 16430 or to bank or savings and loan certificates of deposit. Contractor shall be the beneficial owner of any securities so substituted for monies withheld and shall receive any interest or income thereon. Any escrow agreement entered into pursuant to this Section shall contain, as a minimum, the following provisions:

- a) The amount of securities to be deposited.
- b) The terms and conditions of conversion to cash in case of the default of the Contractor; and
- c) The termination of the escrow upon completion of contract.

RETENTION: Contract amounts to be paid under this contract will be subject to a ten percent (10%) retention to ensure performance. Pursuant to and subject to the provisions of Public Contract Code (PCC) Subsection 22300, the Contractor shall be entitled to substitute securities for retained monies. The value of any securities so substituted shall be valued by the City's Finance Director, whose decision on the valuation of the securities shall be final.

CONTRACTOR RESPONSIBILITIES RELATING TO THE DEPARTMENT OF INDUSTRIAL RELATIONS: 1) No contractor or subcontractor may be listed on a bid proposal for a Public Works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1 (a)]. 2) No contractor or subcontractor may be awarded a contract for Public Works on a Public Works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code 1725.5, 3) This project is subject to compliance monitoring and enforcement by the Department

of Industrial Relations, and 4) All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).

By: _____
Lilly Whalen, City Clerk
City of Sausalito, California

Date: _____

END OF SECTION

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SECTION 00100

INSTRUCTIONS TO BIDDERS

1 ARTICLE 1 – GENERAL

The work to be performed is described in the Contract Documents titled, **Robin Sweeny Park Improvements** dated October 2015 and prepared by **Carducci & Associates, INC.** for the City of Sausalito.

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

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

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

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

City of Sausalito
Attn: Lilly Whalen, City Clerk
420 Litho Street, Sausalito, CA 94965
Robin Sweeny Park Improvements Project

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

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

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

Bids shall give the prices proposed in figures, shall give all other information requested herein, and shall be signed by the Bidder or an authorized representative, including address. By submission of a proposal on the separate forms provided by the City, the Bidder attests that the Bidder has purchased a complete set of these Contract Documents and is aware of its entire contents. Bidder is required to provide a complete Bid on all schedules listed in Section 00300, **BID FORM**.

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

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

2 ARTICLE 2 – BID PRICES

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

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

3 ARTICLE 3 – BIDDER’S SIGNATURE AND AUTHORITY

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

4 ARTICLE 4 – BID IRREGULARITIES

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

5 ARTICLE 5 – MODIFICATION OF BID

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

6 ARTICLE 6 – SUBCONTRACTORS AND MAJOR SUPPLIERS

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

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

7 ARTICLE 7 – BID GUARANTY BOND AND CONTRACT AWARD

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

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

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

8 ARTICLE 8 – CONTRACTOR'S LICENSE

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

9 ARTICLE 9 – WORK PERCENTAGES

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

10 ARTICLE 10 – COLLUSION

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

11 ARTICLE 11 – INTERPRETATIONS

No oral representations or interpretations will be made to any Bidder as to the meaning of the Contract Documents. Requests for an interpretation shall be made in writing and delivered to the

following address at least ten (10) days before the Bids are opened as provided in Section 00010, NOTICE INVITING BIDS.

Requests should be made to Loren Umbertis, Public Works Division Manager, City of Sausalito, 420 Litho Street, Sausalito, CA 94965.

12 ARTICLE 12 – WITHDRAWAL OF BID

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

13 ARTICLE 13 – BID PROTEST

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

- A. The initial protest document must contain a complete statement of the basis for the protest, and all supporting documentation.
- B. The party filing the protest must have actually submitted a Bid for the Work. A subcontractor of a party submitting a Bid for the Work may not submit a Bid protest. A party may not rely on the Bid protest submitted by another Bidder, but must timely pursue its own protest.
- C. The protest must refer to the specific portion of the Bid document which forms the basis for the protest.
- D. The protest must include the name, address and telephone number of the person representing the protesting party.
- E. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest which may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- F. The City will give the protested Bidder five (5) working days after the receipt of the protest to submit a written response. The responding Bidder shall transmit the response to the protesting Bidder concurrent with delivery to the City.

- G. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder’s sole and exclusive remedy in the event of Bid protest. The Bidder’s failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings
- H. If the City determines that a protest is frivolous, the protesting Bidder may be determined to be non-responsible and that Bidder may be determined to be ineligible for future contract awards.

14 ARTICLE 15 – BIDDERS CHECKLIST

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

| <u>Item</u> | <u>Checked</u> |
|---------------------------------------------------------------------------------------|----------------|
| Bid Form (Section 00300) | _____ |
| Bid Guaranty Bond (Section 00410) | _____ |
| Certification of Bidder’s Experience and Qualifications (Section 00420) | _____ |
| Designation of Subcontractors (Section 00430) | _____ |
| Site Visit Affidavit (Section 00440) | _____ |
| Non-Collusion Affidavit (Section 00480) | _____ |
| Affidavit of Safety Compliance (Section 00490) | _____ |
| Copy of BIDDER'S California State Contractor's License | _____ |
| BIDDER'S proof of registration with the California Department of Industrial Relations | _____ |

15 ARTICLE 16 – CONTRACTOR REGISTRATION

Contractor and all subcontractors listed on the bid proposal shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractor must provide proof of registration with the California Department of Industrial Relations (DIR) in the form of a PDF extract from DIR Public Works Registration website.

Pursuant to California SB854, Contractor and subcontractor must submit certified payroll records (CPRs) to the Labor Commissioner.

Project is subject to compliance monitoring and enforcement by the DIR.

END OF SECTION

SECTION 00300

BID FORM

PROJECT IDENTIFICATION: Robin Sweeny Park Improvements Project

THIS BID IS SUBMITTED TO:

City of Sausalito, herein after referred to as OWNER.

1. Enter Into Agreement

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

2. BIDDER Acknowledgements

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

3. BIDDER's Representations

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

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

| |
|-------------|
| ADDENDA NO. |
| _____ |
| _____ |
| _____ |

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

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

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

- i. BIDDER is aware of the general nature of Work to be performed by OWNER and others at the Site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- j. BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- k. BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
- l. Where conflicts, errors, ambiguities or discrepancies have been discovered in or between Contract Documents and/or other related documents, and where said conflicts, etc., have not been resolved through the interpretations or clarifications by ENGINEER as described in the Instructions to Bidders, because of insufficient time or otherwise, BIDDER has included in the Bid the greater quantity or better quality of Work, or compliance with the more stringent requirement resulting in a greater cost.

Name of Bidder: _____

- m. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.

4. Bid Prices

BIDDER agrees to perform the work described in the CONTRACT DOCUMENTS for the unit prices or lump sum prices stated on the attached.

BID SCHEDULE

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|------|----------------------------------------------------------------------------------------------------|-------|------|------------|----------------|
| 1 | Mobilization, SWPPP, Construction Fencing, Traffic & Pedestrian Control, Demobilization | 1 | LS | | |
| 2 | Demolition/Clear & Grub | 1 | LS | | |
| 3 | Field Survey, Layout, & Staking | 1 | LS | | |
| 4 | Rough & Fine Grading (~20,000 sf) | 1 | LS | | |
| 5 | Storm Drainage System: | | | | |
| A | Perforated Pipe | 675 | LF | | |
| B | Storm Drain – 4” PVC | 201 | LF | | |
| C | Storm Drain – 6” PVC | 168 | LF | | |
| D | Storm Drain – 8” PVC | 269 | LF | | |
| E | Drain Inlet | 3 | EA | | |
| F | Clean-outs/Planter Drains | 23 | EA | | |
| G | Buried Clean Out at Sand and Synthetic Turf | 18 | EA | | |
| H | Drains in Pavers/Drains in Poured Rubber | 7 | EA | | |
| I | Area Drain | 2 | EA | | |
| 6 | Copper Water Line (includes ~110 LF PVC sleeve where required) | 285 | LF | | |
| 7 | Concrete Retaining Wall | 442 | LF | | |
| 8 | Concrete Steps at Path to Upper Terrace | 30 | SF | | |
| 9 | 6” wide Concrete Curb Wall | 253 | LF | | |
| 10 | 12” wide Concrete Seat Wall | 70 | LF | | |
| 11 | Concrete Niche Wall per detail 1/L9.03 | 12 | LF | | |
| 12 | Robin Sweeny Entry Sign & Wall | 1 | LS | | |
| 13 | Concrete Entry Plinth Walls and Stairs | 1 | LS | | |
| 14 | Color Stain at Play Area Walls | 1 | LS | | |
| 15 | Accessible Path and Plaza | | | | |
| A | Concrete Paving – Accessible Pedestrian Pathway | 3,813 | SF | | |
| B | Handrails at Accessible Ramps and Stairs | 200 | LF | | |
| C | Remove & Reset Existing Brick Pavers at Senior Plaza for accessibility. | 900 | SF | | |
| 16 | New Brick Pavers @ 5 small plazas | 140 | SF | | |
| 17 | Electrical System and Fixtures (coordinate post lights with precast concrete posts) | 1 | LS | | |
| 18 | 42” High Ornamental Metal Fence @ Concrete Wall | 350 | LF | | |
| 19 | 18” High Ornamental Metal Fence @ Concrete Wall | 19 | LF | | |

Name of Bidder: _____

| | | | | | |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-----------|--|--|
| 20 | 4' wide Accessible Entrance Gate at Play Area | 2 | EA | | |
| 21 | 48" High Precast Concrete Post | 29 | EA | | |
| 22 | Landscape Improvements-Irrigation | | | | |
| A | Disconnect & Cap Existing Irrigation Mainline at Northwest and Southwest Corner of Park. Connect new Irrigation Mainline to Existing Mainline at both locations. | 1 | LS | | |
| B | Main Pressure Irrigation Pipe | 585 | LF | | |
| C | Drip Irrigation | 6,237 | SF | | |
| D | Controller, Flow Sensor, Master Valve, and Pressure Regulator | 1 | LS | | |
| E | Remote Control Valves | 11 | EA | | |
| F | Ball Valves and Quick Coupler Valves | 13 | EA | | |
| G | Full Circle, Adjustable Arc, and Corner Stream Spray | 53 | EA | | |
| H | Flood Bubblers @ Shrubs/Vines | 27 | EA | | |
| I | Pop-Up Bubblers @ Trees (2 per) | 10 | EA | | |
| 23 | Landscape Improvements- Planting | | | | |
| A | Sand Based Sod Mix | 8415 | SF | | |
| B | Native Bentgrass Sod | 1961 | SF | | |
| C | Wood Mulch | 1195 | SF | | |
| D | Container Planting | 3985 | SF | | |
| E | Tree 24" Box | 3 | EA | | |
| F | Tree 36" Box | 1 | EA | | |
| G | Tree 48" Box | 1 | EA | | |
| 24 | Play Area | | | | |
| A | Synthetic Turf | 2862 | SF | | |
| B | Poured in Place Rubber | 900 | SF | | |
| C | Sand Play Area | 132 | SF | | |
| D | Transfer Station | 1 | LS | | |
| E | Concrete Wall with Lumber Top | 110 | LF | | |
| F | Willow Forest Play Areas | 1 | LS | | |
| G | Elephant Play Spin Tree | 1 | LS | | |
| H | Climbing Handholds | 1 | LS | | |
| I | Landscape Structures: Custom Hill Climb (Starseeker), Swing, 64" Height Cloudburst Slide | 1 | LS | | |
| J | Freenotes Harmony Park Chimes | 1 | LS | | |
| K | Dock Bench | 1 | LS | | |
| 25 | Site Furnishings | | | | |
| A | 30' Flagpole including drilled pier | 1 | LS | | |
| B | Newspaper Rack | 1 | LS | | |

Name of Bidder: _____

| | | | | | |
|-------------------------------------|--------------------------------------------------------|---|----|--|--|
| C | Dog Station | 1 | EA | | |
| D | Drinking Fountain- Hi-Low with jug filler and pet bowl | 1 | EA | | |
| TOTAL BASE BID (use figures) | | | | | |

ALTERNATE BID ITEMS

The following Alternate Bid amounts shall be added to the Total Bid Price entered above at City's sole option. City can choose to include one or more of the Alternate Bids in the Project at its sole discretion. If any of the Alternate Bids are selected by City, the resulting amount shall be added to Total Bid Price for the Project. City can award/select Alternate Bid items at any time(s). However, if City elects to award any or all of the alternates, the items will be constructed within the same duration of the items in the base bid. Therefore, no additional line items for mobilization, traffic control, and demolition have been included in the alternate price bid forms.

ALTERNATE 1-Lumber Topped Walls:

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|-----------------------------|------------------------------------------------------------------------------|-----|------|------------|----------------|
| 1 | Construct Lumber Topped Walls w/ Skate Deterrence as shown in Detail 1/L9.05 | 200 | LF | | |
| TOTAL – ALTERNATE 1: | | | | | |

ALTERNATE 2- Accessibility to Park:

ALTERNATE 2A – CONSTRUCT NORTHWEST STAIRS TO BASKETBALL COURT

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|------------------------------|----------------------------|-----|------|------------|----------------|
| 1 | Concrete Walls @ 8" Thick | 77 | LF | | |
| 2 | Hand Rails | 56 | LF | | |
| 3 | Concrete Steps | 75 | SF | | |
| 4 | Concrete Landings | 125 | SF | | |
| 5 | Chain link Fence, 12' High | 10 | LF | | |
| 6 | Fence Fabric, 12' High | 10 | LF | | |
| TOTAL – ALTERNATE 2A: | | | | | |

Name of Bidder: _____

ALTERNATE 2B – SOUTHEAST RAMP ENTRY

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|------------------------------|-----------------------------|------------|-------------|-------------------|-----------------------|
| 1 | ADA Compliant Parking Space | 1 | LS | | |
| 2 | ADA Compliant Curb Ramp | 1 | EA | | |
| 3 | Concrete Steps | 10 | SF | | |
| 4 | ADA Compliant Concrete Ramp | 170 | SF | | |
| 5 | Concrete Walls @ 8" Thick | 60 | LF | | |
| 6 | Hand Rails | 62 | LF | | |
| 7 | Concrete Sidewalk | 470 | SF | | |
| TOTAL – ALTERNATE 2B: | | | | | |

ALTERNATE 2C – NORTHEAST RAMP ENTRY

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|------------------------------|------------------------------------------------------------------------------|------------|-------------|-------------------|-----------------------|
| 1 | ADA Compliant Curb Ramp | 1 | EA | | |
| 2 | Concrete Walls @ 12" Thick | 42 | LF | | |
| 3 | Construct Lumber Topped Walls w/ Skate Deterrence as shown in Detail 1/L9.05 | 46 | LF | | |
| 4 | Concrete Sidewalk | 857 | SF | | |
| 5 | Concrete Ramp | 85 | SF | | |
| 6 | Hand Rails | 34 | LF | | |
| 7 | Chain link Fence, 12' High | 24 | LF | | |
| TOTAL – ALTERNATE 2C: | | | | | |

ALTERNATE 3 – DUST-FREE METHOD OF SANDBLAST FINISH

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------|------------|-------------|-------------------|-----------------------|
| 3 | Provide alternate dust-free method of finish to concrete walls to achieve equivalent of a medium sandblast finish. | 1 | LS | | |
| TOTAL – ALTERNATE 3: | | | | | |

Name of Bidder: _____

ALTERNATE 4 – ART ADDITIONS

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|-----------------------------|-----------------------------------------------------------------------------------------|------------|-------------|-------------------|-----------------------|
| A | Whale Art Fence – Furnish and install fence, and relocate whale art as shown on 4/L9.06 | 1 | LS | | |
| B | Seal Statue – Furnish and Install | 1 | LS | | |
| C | Art Fence Animals – Furnish and Install | 38 | EA | | |
| D | Pelican Statue – Remove & Relocate as shown on L1.02 and L2.02. | 1 | LS | | |
| TOTAL – ALTERNATE 4: | | | | | |

ALTERNATE 5 – BIKE GARDENS

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|-----------------------------|------------------------------------------------------|------------|-------------|-------------------|-----------------------|
| 5 | Furnish and Install Bike Gardens as Shown on 1/L9.09 | 2 | EA | | |
| TOTAL – ALTERNATE 5: | | | | | |

ALTERNATE 6 – PLANTING ESTABLISHMENT

| Item | Description | QTY | UNIT | UNIT PRICE | EXTENDED PRICE |
|-----------------------------|----------------------------------------|------------|-------------|-------------------|-----------------------|
| 6 | Maintenance Period - 120 Calendar Days | 4 | MOS | | |
| TOTAL – ALTERNATE 7: | | | | | |

TOTAL BID FOR ALL BID ITEMS (use words)

_____ dollars and
 _____ cents

5. Completion

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

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

6. Attached Documents

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

- a. Bid Guaranty Bond (Section 00410)
- b. Bidder's Experience and Qualifications (Section 00420)
- c. Designation of Subcontractors (Section 00430)
- d. Site Visit Affidavit (Section 00440)
- e. Non-Collusion Affidavit (Section 00480)
- f. Affidavit of Safety Compliance (Section 00490)
- g. Copy of BIDDER'S California State Contractor's License.
- h. Copy of BIDDER'S proof of registration with the California Department of Industrial Relations (DIR) in the form of a PDF extract from DIR Public Works Registration website.

7. Major Equipment Items – Not Used

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

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

9. Address for Communications

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

10. Defined Terms

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

SUBMITTED on _____, 2016.

If BIDDER is:

An Individual

By _____ (SEAL)
(Individual's name)

Name of Bidder: _____

doing business as _____

Business address: _____

A Partnership

By _____ (SEAL)
(Firm name)

(General partner)

Business address: _____

A Corporation

By _____ (SEAL)
(Corporation name)

(State of incorporation)

By _____ (SEAL)
(Name of person authorized to sign)

(Title)

(Corporate Seal)

Attest _____
(Secretary)

Business address: _____

A Joint Venture

By _____ (SEAL)
(Name)

(Address)

By _____ (SEAL)
(Name)

(Address)

Name of Bidder: _____

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

END OF SECTION

SECTION 00410

BID GUARANTY BOND

(To Accompany Bid)

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

Robin Sweeny Park Improvements Project

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

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

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

SIGNED AND SEALED THIS _____ day of _____, 2016.

****END OF SECTION****

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SECTION 00420

**CERTIFICATION OF BIDDER'S
EXPERIENCE AND QUALIFICATIONS**

(To Accompany Bid)

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

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

1 ARTICLE 1 – ESSENTIAL REQUIREMENTS FOR QUALIFICATION

If the answer to any of questions 1 through 4 is “no”, or if the answer to any of questions 5 through 8 is “yes”, the Bidder will be disqualified from being awarded the Contract.

1. Bidder possesses a valid and current California Contractor’s license for the project for which it intends to submit a Bid.
 Yes No
2. Bidder will comply with and provide all insurance as defined in Section 00800-Article 2, **INDEMNITY AND INSURANCE**.
 Yes No
3. Bidder has current Workers’ Compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.
 Yes No
4. Bidder has registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
 Yes No
5. Has your contractor’s license been revoked at any time in the last five (5) years?
 Yes No
6. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?
 Yes No

Name of Bidder: _____

7. At the time of submitting this qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

Yes No

8. At any time during the last five (5) years, has your firm, or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?

Yes No

2 ARTICLE 2 – PROJECT EXPERIENCE

The Bidder shall list below at least five (5) projects completed in the last five (5) years of at least \$700,000 in Contract Amount involving construction of parks, playgrounds and landscaping that indicate the Bidder's experience as a Contractor. If the Bid is submitted by a Joint Venture, list at least four (4) completed projects. It is acceptable to submit this information on other forms as long as the information required below is included. Failure to provide this information with the Bid may render the Bid non-responsive and may be the basis for rejection of the Bid.

1. Project Name: _____

Owner: _____

Construction Cost: \$ _____

Construction Time: _____ Calendar Days

Owner's Representative: _____

Owner's Telephone No: (____) _____

Date of Substantial Completion: _____

2. Project Name: _____

Owner: _____

Construction Cost: \$ _____

Construction Time: _____ Calendar Days

Owner's Representative: _____

Owner's Telephone No: (____) _____

Date of Substantial Completion: _____

Name of Bidder: _____

3. Project Name: _____

Owner: _____

Construction Cost: \$ _____

Construction Time: _____ Calendar Days

Owner's Representative: _____

Owner's Telephone No: (____) _____

Date of Substantial Completion: _____

4. Project Name: _____

Owner: _____

Construction Cost: \$ _____

Construction Time: _____ Calendar Days

Owner's Representative: _____

Owner's Telephone No: (____) _____

Date of Substantial Completion: _____

5. Project Name: _____

Owner: _____

Construction Cost: \$ _____

Construction Time: _____ Calendar Days

Owner's Representative: _____

Owner's Telephone No: (____) _____

Date of Substantial Completion: _____

3 ARTICLE 3 – SAFETY QUALIFICATION CRITERIA

The following information will be used to determine if you meet the minimum safety requirements for this Project. To qualify to bid and be awarded the Project, the Contractor's three year average Workers' Compensation Experience Modification (EMR) must not be greater than 1.1 (110%). The Bidder shall list its Experience Modification Rate for the last three (3) complete years (available from your insurance carrier). If the Bidder's EMR is greater than 1.1 (110%), Contractor may include an explanation of the factors that elevated its EMR. The City will

Name of Bidder: _____

evaluate that information as part of its determination of the Bidder's responsibility for purposes of the award of the contract.

| <u>Year</u> | <u>EMR</u> |
|-------------|------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Three Year Average = _____

To verify the above information, the City will contact the Bidder's Workers' Compensation Insurance carrier. The Bidder shall authorize its carrier to release this information. Failure to release this information will result in the Bid being non-responsive and result in automatic disqualification of the Bid.

Worker's Compensation Insurance Company: _____

Contact Person for Insurance Company: _____

Telephone Number: (_____) _____

Signed this _____ day of _____, 2016.

Name of Bidder

Contractor's License No.

Expiration Date

Signature of Bidder

Title of Signatory

END OF SECTION

Name of Bidder: _____

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Name of Bidder: _____

SECTION 00440

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

State of California

County of _____

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

is _____ of _____
(Title of Representative) (Contractor's Legal Name)

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

Signature of Authorized Representative

Type/Print Name of Bidder

Type/Print Representative's Name

Type/Print Title

Date

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

Name of Bidder: _____

State of California

County of _____

On _____, before me, _____ the
(Date) *(Name and Title of Officer)*

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

_____,
(Name(s) of person(s) signing above document)

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

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

WITNESS my hand and official seal.

Notary Public

END OF SECTION

Name of Bidder: _____

SECTION 00480

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

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

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

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

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

Signature

Date

Subscribed and sworn to before me this

_____ day of _____, 2016

Notary Public in and for the State of California

Public Contract Code Section 7106
Code of Civil Procedure Section 2015.5

END OF SECTION

Name of Bidder: _____

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SECTION 00490

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

Robin Sweeny Park Improvements Project

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

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

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

Name of Bidder: _____

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

Executed On: _____, _____

Signature

Name of Bidder

Name (Print)

Title

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

Name of Bidder: _____

CERTIFICATE OF ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____ before me, _____,
Date *Name, Notary Public*

personally appeared _____,
Name, Title of Officer

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

Witness my hand and official seal.

Signature of Notary

CONTRACTOR SAFETY OPERATIONS REQUIREMENTS

(To be submitted with Contractor’s Safety Program prior to commencing work)

1 PART A - SAFETY PROGRAMS

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

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

Name of Bidder: _____

| | | | | | | | | | | | |
|-----|-----------------------------------|--|--|--|--|--|--|--|--|--|--|
| YES | Traffic Control Safety | | | | | | | | | | |
| YES | Fall Prevention Plan ¹ | | | | | | | | | | |

¹ If conventional fall protection measures cannot be used.

2 PART B - SAFETY EQUIPMENT

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

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

Name of Bidder: _____

Name of Bidder: _____

3 PART C - SPECIALIZED TRAINING AND CERTIFICATION

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

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

4 PART D – JOB SITE SAFETY PRACTICES

1. Name of person who will have responsibility for job site safety?

2. Who will be responsible for conducting and documenting accident investigations?

Does your company perform near-miss investigations? _____
Please provide sample copy of investigation forms.

3. How often are job site safety audits or inspections performed, _____
and by whom? _____

4. Does the person who is responsible for job site safety have authority to take immediate action to correct unsafe conditions of work practices? _____

5. Who will be designated the competent person for excavation safety on the project?

Provide substantiation of training for the competent person.

6. How often are job site tailgate or toolbox safety meetings held? _____

7. Briefly describe how you will ensure that workers comply with safety programs and Cal/OSHA requirements? _____

8. Please list any Cal/OSHA citations and penalties you have received in the last three years.

9. Have there been any on-the-job fatalities at any job site managed by the Contractor in the last five years? _____ If yes, please explain.

10. Does your company have a safety incentive program? _____
If yes, please explain. _____

Name of Bidder: _____

Name of Bidder: _____

END OF SECTION

SECTION 00500

**AGREEMENT FOR THE CONSTRUCTION OF
Robin Sweeny Park Improvements Project**

THIS AGREEMENT, made and concluded, in duplicate, this ____ day of _____, 2016, between the CITY OF SAUSALITO ("City") and _____ ("Contractor").

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

WITNESSETH:

1. That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City, and under the conditions expressed in the two bonds, bearing even date with these presents, Contractor shall at his/her own proper cost and expense, to do all the Work and furnish all the materials necessary to construct and complete in good workmanlike and substantial manner the project entitled: Urgent Sewer Replacement Project in strict conformity with the Contract Documents prepared therefore, which said Contract Documents are hereby specially referred to and by said reference made a part hereof.
2. Contractor hereby agrees to complete the Work in its entirety in accordance with the Contract Documents for the sum of _____ (\$ _____) (the "Contract Sum") computed in accordance with Contractor's accepted proposal dated _____, 2015, which accepted proposal is incorporated herein by reference thereto as if herein fully set forth. Compensation shall be based upon any lump sum bid items plus the unit prices stated in the Bid Schedule, base bid and any accepted bid alternatives, times the actual quantities or units of work and materials performed or furnished. The further terms, conditions, and covenants of this Agreement are set forth in the Contract Documents, each of which is by this reference made a part hereof. Payments are to be made to the Contractor in accordance with the provisions of the Contract Documents and the Technical Specifications in legally executed and regularly issued warrants of the City, drawn on the appropriate fund or funds as required by law and order of the City.
3. City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide the materials and to do the Work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

4. The Contractor and any subcontractor performing or contracting any work shall comply with all applicable provisions of the California Labor Code for all workers, laborers and mechanics of all crafts, classifications or types, including, but necessarily limited to the following:
- (a) The Contractor shall comply with all applicable provisions of Sections 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The Contractor shall, as a penalty to the City, forfeit the sum of twenty-five dollars (\$25) for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of eight (8) hours at not less than 1-1/2 times the basic rate of pay.
 - (b) Pursuant to the provision of California Labor Code, Section 1770 et seq., the Contractor and any subcontractor under him shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Pursuant to the provisions of California Labor Code Section 1773.2, the Contractor is hereby advised that copies of the prevailing rate of per diem wages and a general prevailing rate for holidays, Saturdays and Sundays and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker required to execute the Contract, are on file in the office of the City, which copies shall be made available to any interested party on request. The Contractor shall post a copy of said prevailing rate of per diem wages at each job site.
 - (c) As required by Section 1773.1 of the California Labor Code, the Contractor shall pay travel and subsistence payments to each worker needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.
 - (d) To establish such travel and subsistence payments, the representative of any craft, classification, or type of workman needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within ten (10) days after their execution and thereafter shall establish such travel and subsistence payments whenever filed thirty (30) days prior to the call for bids.
 - (e) The Contractor shall comply with the provisions of Section 1775 of the California Labor Code and shall, as a penalty to the City, forfeit up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the Contract. The Contractor shall pay each worker an amount equal to the difference between the prevailing wage rates and the amount paid worker for each calendar day or portion thereof for which a worker was paid less than the prevailing wage rate. Contractor is required to pay all applicable penalties and back wages in the event of violation of

prevailing wage law, and Contractor and any subcontractor shall fully comply with California Labor Code Section 1775, which is incorporated by this reference as though fully set forth herein.

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

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

Each Contractor shall file a certified copy of the records, enumerated in Paragraph 4(f) with the entity that requested the records within ten (10) days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated. The Contractor shall inform the City of the location of the records enumerated under Paragraph 4(f) including the street address, city and county, and shall, within five (5) working days, provide a notice of change of location and address. The

Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Paragraph 4(f). In the event that the Contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or the City, forfeit \$25.00 dollars for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Responsibility for compliance with Paragraph 4(f) lies with the Contractor.

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

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

Contractor shall not commence work until the Contractor submits written evidence that it has obtained full Workers' Compensation Insurance coverage for all persons whom it employs or may employ in carrying out the Work under this Contract. This insurance shall

be in accordance with the requirements of the most current and applicable state Workers' Compensation Insurance Laws. In accordance with the provisions of Section 1861 of the California Labor Code, the Contractor in signing this agreement certifies to the City as true the following statement: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract."

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

- (i) In accordance with the provisions of Section 1727 of the California Labor Code, the City, before making payment to the Contractor of money due under a contract for public works, shall withhold and retain therefrom all wages and penalties which have been forfeited pursuant to any stipulation in the Contract, and the terms of Chapter 1, Part 7, Division 2 of the California Labor Code (commencing with Section 1720). But no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by either the Division of Labor Standards Enforcement or by the City.

- 5. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this Agreement and the bid proposal of Contractor, then this Agreement shall control, and nothing herein contained shall be considered as an acceptance of the terms of Contractor's proposal conflicting herewith.
- 6. The Contractor agrees to provide and maintain insurance coverage, and to indemnify and save harmless the parties named and in the manner set forth in Section 00800-Article 2, **INDEMNITY AND INSURANCE**, of the Supplementary General Conditions of the Specifications.

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

- 7. The Contractor shall diligently prosecute the Work so that it shall be substantially completed within the time specified in Section 00800-1.01, **TIME ALLOWED FOR COMPLETION**.
- 8. Except as otherwise may be provided herein, Contractor hereby expressly guarantees for two (2) full years from the date of the Substantial Completion of the Work under this Agreement and acceptance thereof by the City, to repair or replace any part of the Work performed hereunder which constitutes a defect resulting from the use of inferior or defective materials, equipment or workmanship. If, within said period, any repairs or replacements in connection with the Work are, in the opinion of the City, rendered necessary as the result of the use of inferior or defective materials, equipment or workmanship, Contractor agrees, upon receipt of notice from the City, and without expense to the City, to promptly, and in no event more than ten (10) days, after receipt of written notice from City repair or replace such material or workmanship and/or correct any and all defects therein. If Contractor, after such notice, fails to proceed promptly to

comply with the terms of this guarantee, the City may perform the work necessary to effectuate such correction and recover the cost thereof from the Contractor or its sureties.

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

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

9. The Contractor shall provide, on the execution of this Agreement, a good and sufficient corporate surety bond in the penal sum of one hundred percent (100%) of amount bid, which bond shall be on the form provided by the City in Section 00610, **BOND OF FAITHFUL PERFORMANCE**, and be conditioned upon the faithful performance of all Work required to be performed by the Contractor under this Agreement. Said bond shall be liable for any and all penalties and obligations which may be incurred by Contractor under this Agreement. The surety bond shall be issued by a corporate surety authorized to conduct business in California. At its discretion, the City may request that a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California be submitted by the surety to the City. At its discretion, the City may also require the insurer to provide copies of its most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.
10. In addition to the bond required under Paragraph 9, hereof, Contractor shall furnish a good and sufficient corporate surety bond in the penal sum of one hundred percent (100%) of amount of bid, which bond shall be on the form provided by the City in Section 00620, **PAYMENT BOND**, and conform strictly with the provisions of Chapter 7, Title 15, Part 4, Division 3, of the Civil Code of the State of California, and all amendments thereto. The corporate surety bond shall be issued by a corporate surety authorized to conduct business in California. At its discretion, the City may request that a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California be submitted by the surety to the City. At its discretion, the City may also require the insurer to provide copies of its most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.
11. The Contractor may substitute securities for the amounts retained by the City to ensure performance of the Work in accordance with the provisions of Section 22300 of the Public Contract Code.
12. The Contractor shall submit to the City within fifteen (15) calendar days of the Notice of Award a typewritten list containing a description of each proposed substitute item or material, along with sufficient data, drawings, samples, literature, calculations or other detailed information as will demonstrate to the Design Consultant that the proposed substitute is equal in quality and utility to the material specified.

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

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

14. In accordance with Section 7104 of the Public Contract Code, whenever any work involves digging trenches or other excavations that extend deeper than four feet below the surface, the provisions of Section 00700-7.02, **DIFFERING SITE CONDITIONS**, shall apply.

15. In accordance with Section 7103.5 of the Public Contract Code, the Contractor and subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, materials or services pursuant to this Contract or the subcontract. Such assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties.

16. In accordance with Section 4552 of the Government Code, the Contractor shall conform to the following requirements. In submitting a Bid to the City, the Contractor offers and agrees that if the Bid is accepted, it will assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchase of goods, materials, or services by the Contractor for sale to the City pursuant to the Bid. Such assignment shall be made and become effective at the time the City tenders final payment to the Contractor.

17. Pursuant to Public Contract Code Section 7100, the acceptance by the Contractor of an undisputed payment made under the terms of the Contract shall operate as, and shall be, a

release to the City, and their duly authorized agents, from all claim of and/or liability to the Contractor arising by virtue of the Contract related to those amounts. Disputed contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release.

18. In accordance with California Business and Professions Code Section 7030, the Contractor is required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning the Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.
19. The acceptance of each payment made to Contractor under this Agreement shall constitute a warranty that all subcontractors, laborers and material suppliers on the Project have been paid for all work, material, labor provisions, provender, equipment, or other supplies and efforts made toward the construction of improvements.
20. **INDEMNIFICATION.** Contractor shall indemnify, defend with counsel acceptable to Owner, and hold harmless to the full extent permitted by law, the City and its officers, officials, employees, agents and volunteers, Design Consultant and all of their respective agents and employees; (collectively "the Indemnified Parties") in accordance with the requirements of Section 00800-2.01E, **Indemnification.**
21. **SEVERABILITY.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise enforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
22. **LICENSE.** Contractor's attention is directed to Business and Professions Code Sections 7000 et seq. concerning the licensing of contractors. At the time Contractor enters into this Contract and all times Contractor is performing the Work, Contractor shall have a valid license issued by the Contractors State License Board in the classification stated in the Special Provisions. All bidders and subcontractors shall be licensed in accordance with the laws of this State and any contractor or subcontractor not so licensed is subject to penalties imposed by such laws.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of _____, 2016.

CONTRACTOR

By: _____

Title: _____

THE CITY OF SAUSALITO

By: _____

Lilly Whalen, City Clerk
City of Sausalito, California

Approved as to Form:

By: _____

City Attorney

END OF SECTION

SECTION 00610

BOND OF FAITHFUL PERFORMANCE

BOND NO. _____

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City Council of the City of Sausalito (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement (the "Contract") for construction of the **Robin Sweeny Park Improvements Project** (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the two-year guarantee of all materials and workmanship; and shall indemnify, defend and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees and expert fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

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

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

SIGNATURES OF THOSE SIGNING FOR SURETY MUST BE NOTARIZED, AND EVIDENCE OF CORPORATE AUTHORITY ATTACHED.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$ _____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or _____
Representative for service of
process in California, if different _____
from above)

(Telephone number of Surety and _____
Agent or Representative for service _____
of process in California)

END OF SECTION

BOND NO. _____

SECTION 00620

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City Council of the City of Sausalito (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement (the "Contract") for construction of:

Robin Sweeny Park Improvements Project (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by the Contract Documents to furnish a bond to secure payment for all work, labor, materials, equipment or services furnished in connection with the Construction Contract;

NOW, THEREFORE, CONTRACTOR, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto City, as defined herein, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Payment Bond.

1. CONTRACTOR and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to CITY to pay for work, labor, materials, equipment, services, or other items furnished for use and actually used in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to CITY, this obligation shall be null and void if CONTRACTOR:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds CITY harmless from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for work, labor, materials, equipment, services or other items furnished for use in the performance of the Construction Contract, provided CITY has promptly notified CONTRACTOR and Surety (at the

address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to CONTRACTOR and Surety.

3. With respect to Claimants, this obligation shall be null and void if CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with CONTRACTOR have given notice to Surety (at the address described below) and sent a copy, or notice thereof, to CITY, stating that a claim is being made under this Payment Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the CONTRACTOR:

4.3. Have furnished written notice to CONTRACTOR and sent a copy, or notice thereof, to CITY, as required by and conforming with Civil Code sections 3252 and 3091; and

4.4. Not having been paid within 30 days of sending the required notice, have sent a written notice to Surety (at the address described below) and sent a copy to the CITY, stating that a claim is being made under this Payment Bond and enclosing a copy of the previous written notice furnished to CONTRACTOR.

5. When the Claimant has satisfied the conditions of Paragraph 4, Surety shall promptly and at Surety's expense take the following actions:

5.1 Send an answer to the Claimant, with a copy to CITY, within 20 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

5.2 Pay or arrange for payment of any undisputed amounts.

6. Surety's total obligation shall not exceed the amount of this Payment Bond, and the amount of this Payment Bond shall be credited for any payments made in good faith by Surety.

7. Amounts owed by CITY to CONTRACTOR under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Performance Bond. By CONTRACTOR furnishing and CITY accepting this Payment Bond, they agree that all funds earned by CONTRACTOR in the performance of the Construction Contract are dedicated to satisfy obligations of CONTRACTOR and Surety under this Bond,

subject to the CITY'S priority to use the funds for the completion of the work or the satisfaction of CITY'S claims, including liquidated damages, under the Construction Contract.

8. Surety shall not be liable to CITY, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Construction Contract. CITY shall not be liable for payment of any costs or expenses of any Claimants under this Payment Bond, and shall have under this Payment Bond no obligation to make payments to, give notices on behalf of, or otherwise have any obligation to Claimants under this Payment Bond.

9. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

10. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as costs.

11. Notice to Surety, City or Contractor shall be mailed or delivered to the address shown on the signature page.

12. This Payment Bond has been furnished to comply with Civil Code sections 3247 through 3252. Any provision in this Payment Bond conflicting with those statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Payment Bond shall be construed as a statutory bond and not as a common law bond.

13. Upon request by any person or entity appearing to be a potential beneficiary of this Payment Bond, the Contractor shall promptly furnish a copy of this Payment Bond or shall permit a copy to be made.

14. DEFINITIONS

14.1 Claimant: An individual or entity identified in California Civil Code sections 3181 or 3248.

14.2 Construction Contract: The agreement between CITY and CONTRACTOR identified above, including all Contract Documents and changes thereto.

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

SIGNATURES OF THOSE SIGNING FOR SURETY MUST BE NOTARIZED, AND EVIDENCE OF CORPORATE AUTHORITY ATTACHED.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or _____

Representative for service of

process in California, if different _____

from above)

(Telephone number of Surety and _____

Agent or Representative for service of process in California

END OF SECTION

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SECTION 00630

**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION
Robin Sweeny Park Improvements Project**

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

whose address is _____
hereinafter called "Contractor", and _____
(Escrow Agent)

whose address is _____
hereinafter called "Escrow Agent."

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

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

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

On Behalf of the City:

Title

Name

Signature

Address

On Behalf of Contractor:

Title

Name

Signature

Address

On Behalf of Escrow Agent:

Title

Name

Signature

Address

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

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

City:

Contractor:

Title

Title

Name

Name

Signature

Signature

END OF SECTION

SECTION 00640

GUARANTY

TO THE CITY OF SAUSALITO for construction of

ROBIN SWEENEY PARK IMPROVEMENTS PROJECT

SAUSALITO, CALIFORNIA.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Contractor hereby grants to City of Sausalito for a period of one year following the date of Notice of Completion, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use or occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Completion.

If within one year after the date of Final Completion, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to City of Sausalito and in accordance with City of Sausalito's written instructions, correct such defective Work. Contractor shall remove any defective Work rejected by City of Sausalito and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City of Sausalito may have the defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct defective Work, or defects are discovered outside the correction period, City of Sausalito shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

Firm/Company

Signature

Name and Title

Address

City/State/Zip

Date

END OF SECTION

SECTION 00650

GENERAL LIABILITY ENDORSEMENT (FORM A-1)

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

Robin Sweeny Park Improvements Project

1 ARTICLE 1 – POLICY INFORMATION

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

2 ARTICLE 2 – POLICY AMENDMENTS

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

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

2. **CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the Named Insured for or on behalf of the City; or (b) products sold by the Named Insured to the City; or (c) premises leased by the Named Insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, the Design Consultant and the Construction Manager, and each of their officers, employees, and agents; or stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, the Design Consultant and the Construction Manager and each of their officers, employees, and agents shall be excess of this insurance and shall not contribute with it.

3. **SCOPE OF COVERAGE.** The policy: (1) if primary, affords coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001, Edition 1987); or (2) if excess, affords coverage which is at least as broad as the primary insurance forms referenced in the preceding Section (1).

4. **SEVERABILITY OF INTEREST.** The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.

5. **PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS.** Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, the Design Consultant and the Construction Manager and each of their officers, employees, and agents.

6. **CANCELLATION NOTICE.** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior notice by certified mail return receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.

3 ARTICLE 3 – INCIDENT AND CLAIM REPORTING PROCEDURE

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

Attn: _____

(Title) *(Department)*

(Company)

(Street Address)

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

(Telephone Number)

4 ARTICLE 4 – SIGNATURE OF INSURER OR UNDERWRITER

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

Signature of: _____
Insurer or Underwriter

(original signature required on endorsement furnished to the City)

ORGANIZATION: _____ TITLE: _____

ADDRESS: _____ TELEPHONE: () _____

END OF SECTION

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SECTION 00651

AUTO LIABILITY ENDORSEMENT (FORM B-1)

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

Robin Sweeny Park Improvements Project

1 ARTICLE 1 – POLICY INFORMATION

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

2 ARTICLE 2 – POLICY AMENDMENTS

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

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

the City, the Design Consultant and the Construction Manager and each of its officers, employees, and agents.

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

3 ARTICLE 3 – INCIDENT AND CLAIM REPORTING PROCEDURE

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

Attn: _____

(Title) *(Department)*

(Company)

(Street Address)

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

(Telephone Number)

4 ARTICLE 4 – SIGNATURE OF INSURER OR UNDERWRITER

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

Signature of: _____
Insurer or Underwriter

(original signature required on endorsement furnished to the City)

ORGANIZATION: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: () _____

END OF SECTION

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SECTION 00700

GENERAL CONDITIONS

1 ARTICLE 1 - GENERAL

1.01 CONTRACT AGREEMENT

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

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

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

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

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

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

1.02 WRITTEN NOTICE AND SERVICE THEREOF

Any notice to any party relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed as follows:

when said notice is posted deposited in the U.S. Mail, postage prepaid, to said party at its last given address, notice will be effective two business days after mailing;

or if delivered in person to the said party or its authorized representative of the Work, notice will be effective upon delivery;

or if sent by facsimile to the said party or its authorized representative at a fax number provided in connection with the Project, notice will be effective upon receipt.

1.03 RIGHTS OF ACTION

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

1.04 PLANS AND SPECIFICATIONS

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

Reasonably implied parts of the Work shall be performed as “incidental work” even though absent from the Drawings and Specifications. “Incidental” work shall be performed by Contractor without extra cost to the City. Incidental work includes any

work not shown on Drawings nor described in the Specifications, which is necessary or required to make each installation satisfactory, legally operable, functional, consistent with the intent of the Drawings and Specifications or the requirements of the Contract Documents. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and expense thereof shall be included in the Bid Price. Incidental work includes, but is not limited to, tasks required to be performed under Division 1 **GENERAL REQUIREMENTS** of the Specifications.

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

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

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

Wherever reference specifications are referred to in these Specifications without designation of year, the reference is to the current or revised specification effective at the time of the City receiving bids, unless otherwise referenced in Section 01410, **REGULATORY REQUIREMENTS**.

1.05 APPLICABILITY OF ALL PARAGRAPHS OF SPECIFICATIONS

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

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

1.06 CONTRACT INTERPRETATION BY THE CONSTRUCTION MANAGER

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

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

1.07 ORDER OF PRECEDENCE

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

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

10. Typical Details
11. Reference/Standard Specifications
12. Reference/Standard Plans

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

1.08 BONDS

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

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

The Bond of Faithful Performance shall be in an amount equal to one hundred (100%) percent of the Contract Price and shall be for the faithful performance of the Contract, and for the fulfillment of such other requirements as may be provided by Law. The performance bond shall remain in effect to guarantee the repair and replacement of defective equipment, materials, and workmanship, and payment of damages sustained by the City on account of such defects, discovered within two (2) years after final acceptance by the City, for the Work performed under the Contract which, shall remain in effect for a period of two (2) years, to guarantee the repair and replacement, and payments for damages.

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

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

1.09 PENALTY FOR COLLUSION

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

1.10 RIGHTS AND REMEDIES

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

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

2 ARTICLE 2 - CONTRACT ADMINISTRATION

2.01 ADMINISTRATION OF THE CONTRACT

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

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

2.02 CITY'S REPRESENTATIVE

- A. General - The City's Representative has the authority to act on behalf of the City on change orders, progress payments, Contract decisions, acceptability of the Contractor's work, and early possession.
- B. Change Orders - The City's Representative has the authority to accept or reject Change Orders and cost proposals submitted by the Contractor or as recommended by the Construction Manager to the extent that budget for such costs has been approved by the City Council. Any Change Order or cost proposal that, taking into account the total of the Contract Price and the cost of all approved Change Orders and other costs, will exceed the budget approved by the City Council, shall require subsequent City Council approval before it can be authorized.
- C. Progress Payments - The City's Representative has the authority to accept or reject requests for progress payments which have been submitted by the Contractor and recommended by the Construction Manager.
- D. Contract Decisions - Should the Contractor disagree with the Construction Manager's decision with respect to the Contract, the Contractor may appeal to the City's Representative in accordance with the provisions of the Contract.

- E. Acceptability of Work - The City's Representative has the authority to make the final determination of the acceptability of the Work. The City's Representative also has the authority to accept or reject the Design Consultant's recommendations regarding retention of defective work as provided.

2.03 CONSTRUCTION MANAGER

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

All instructions to the Contractor and all communications from the Contractor to the City or the Design Consultant shall be forwarded through the Construction Manager. The Construction Manager will have authority to act on behalf of the City only to the extent provided in the Contract Documents. The City has delegated its authority to the Construction Manager to make initial decisions regarding questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the work under the Contract. The Construction Manager shall interpret the intent and meaning of the Contract and shall make initial decisions with respect to the Contractor's fulfillment of the Contract and the Contractor's entitlement to compensation. The Contractor shall look initially to the Construction Manager in matters relating to the Contract.

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

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

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

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

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

- D. Acceptability of the Work - The Construction Manager has the authority to make a recommendation as to the acceptability of the Work.
- E. Change Orders - The Construction Manager has the authority to initiate Change Orders; to reject Change Orders proposed by the Contractor or Design Consultant; to negotiate and recommend acceptance of Change Orders; or to order minor changes in the Work at no cost to the City that do not affect the schedule or quality of the Work..
- F. Construction Schedule - The Construction Manager has the authority to review and recommend acceptance of the Progress Schedule submitted by the Contractor at the start of the Work and subsequent significant revisions for conformance to the specified sequence of work and logic.
- G. Progress Payments - The Construction Manager has the authority to recommend acceptance or rejection of requests for progress payments which have been submitted by the Contractor.
- H. Final Payment - The Construction Manager, with the assistance of the Design Consultant, will conduct inspections to determine the dates of Substantial Completion of the Work and final completion of the Work, and will receive and forward to the City, for the City's review, written warranties, and related documents required by the Contract and assembled by the Contractor.

2.04 DESIGN CONSULTANT

- A. General - The Design Consultant will have the authority to act on behalf of the City only to the extent provided in the Contract Documents.
- B. Interpretations - The Design Consultant has the authority to be the initial interpreter of the technical requirements of the Contract Documents. Either party to the Contract may make written request to the Construction Manager for interpretations necessary for the proper execution or progress of the Work. The Construction Manager shall refer such written requests to the Design Consultant, who will render such interpretations. Where the Contractor has requested an interpretation from the Construction Manager, or been notified by the Construction Manager that such interpretation has been requested by the City, any work done before receipt of such interpretations, if not in accordance with same, shall be removed and replaced or adjusted as directed by the Construction Manager without additional expense to the City.

- C. Acceptability of the Work - The Design Consultant has the authority to make a recommendation as to the acceptability of the Work. The Design Consultant has the authority to recommend acceptance of defective work.
- D. Submittal - The Design Consultant shall receive, through the Construction Manager, shop drawings, product data and samples for review in accordance with Section 01330, **SUBMITTALS**.

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

3 ARTICLE 3 - CITY

3.01 GENERAL

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

3.02 ATTENTION TO WORK

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

3.03 OBSERVATION AND INSPECTION

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

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

3.04 CITY'S RIGHT TO USE OR OCCUPY

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

Contract shall be deemed completed only when all the Work contracted has been duly and properly performed and accepted by the City.

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

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

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

- None

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

3.05 CITY'S RIGHT TO CARRY OUT THE WORK

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

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

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

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

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

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

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

3.07 RESPONSIBILITY OF THE CITY

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

4 ARTICLE 4 - CONTRACTOR

4.01 STATUS OF CONTRACTOR AND SUBCONTRACTORS

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

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

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

- Each subcontractor shall carry insurance as required by this Contract, and provide evidence of such insurance, as provided in Section 00800-2.01, **INSURANCE**.

- Each subcontractor shall be obligated to defend, indemnify, and hold the City harmless from all claims arising from the subcontractor's portion of the Work in the same manner as Contractor.
- Each subcontractor shall grant the City a license to use its drawings and design materials as provided in the Agreement.
- Each subcontract shall acknowledge the City's right to suspend or terminate the Contract, and waive any right to anticipated profits in the event of such termination.

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

4.02 CONTRACTOR'S REPRESENTATIVE

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

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

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

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

4.03 LANDS AND RIGHTS OF WAY

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

4.04 FEES AND PERMITS

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

4.05 COMPLIANCE WITH LAWS

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

A. Particular attention is called to the following:

1. The Contractor shall abide by and shall include in its contracts and agreements with subcontractor(s) for the performance of Work on the City's Project a copy of the provisions the California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. Eight Hour Day Limitation – In accordance with the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code, State of California, and in particular Sections 1810 to 1815 inclusive, thereof, eight (8) hours labor shall constitute a day's work and no laborer, worker, or mechanic in the employ of said Contractor, or any subcontractor doing or contracting to do any part of the Work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day, and forty (40) hours in any one calendar week unless

compensated at not less than time and a half as set forth in California Labor Code Section 1815. However, if the prevailing wage determination requires a higher rate of pay for overtime than is required under said Section 1815, then the overtime rate must be paid, as specified in California Code of Regulations Title 8, Group 3, Section 16200(a)(3)(F). The Contractor and each subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the work contemplated by this Contract, which record shall be open at all reasonable hours for the inspection of the City or its officers or agents and by the Division of Labor Standards Enforcement of the Department of Industrial Relations, their deputies or agents; and it is hereby further agreed that said Contractor shall forfeit as a penalty to the Authority, the sum of twenty-five and No/100 Dollars (\$25.00) for each laborer, worker or mechanic employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such laborer, worker or mechanic is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in one calendar week in violation of this stipulation.

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

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

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

Section 1778. "Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives or conspires with another to take or receive, for its own use or the use of any other person any

portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony."

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

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

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

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

4.06 COMPLIANCE WITH ENVIRONMENTAL LAWS

During construction, including any suspension of the Work, the Contractor shall comply with all pertinent requirements of Federal, State, and local environmental laws and regulations, including, but not limited to, the Federal Clean Air Act, State and local air pollution and noise ordinances, construction site erosion control regulations. Specific requirements are further specified in Section 01410, **REGULATORY REQUIREMENTS AND PERMITS**, and Section 01500, **TEMPORARY FACILITIES AND CONTROLS**.

4.07 SAFETY

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

No provision of the Contract Documents shall act to make the City, the Construction Manager, Design Consultant or any other party than the Contractor responsible for safety. The Contractor agrees that for purposes of California Labor Code Section 6400 and related provisions of law the Contractor, the Contractor's privities and any other entities acting pursuant to this Contract will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities acting pursuant to this Contract and that neither the City nor the Construction Manager, Design Consultant or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be responsible for having hazards corrected and /or removed at the location(s) where the Work is to be performed. The Contractor agrees that neither the City nor the Construction Manager, Design Consultant or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees that with respect to the Work to be performed under this Contract and the location(s) where such Work is to be performed, the Contractor will be responsible for not creating hazards, and for having hazards corrected and/or removed. The Contractor agrees that through the safety obligations contained in this Contract and the Contractor's own inspection of the site(s) where the Contract Work is to be performed, the Contractor is aware and has been notified of the hazards to which the Contractor's employees may be exposed in the performance of Contract Work. The Contractor has taken and/or will take appropriate, feasible steps to protect the Contractor's employees from such hazards, and has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers. The Contractor agrees that neither the City nor the Construction Manager, Design Consultant or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities acting pursuant to this Contract.

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

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

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

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

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

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

Contractor's safety supervisor and furnish the safety supervisor's resume to the Construction Manager.

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

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

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

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

E. Excavation Safety - In accordance with the provisions of Section 6705 of the Labor Code, the Contractor shall submit, in advance of excavation of any trench or trenches five feet or more in depth, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plans vary from the shoring system standards set forth in the Construction Safety

Orders of the Division of Industrial Safety in Title 8, Subchapter 4, Article 6, California Code of Regulations, the plans shall be prepared and signed by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Contract for completion of the Work as set forth in the Contract Documents. Nothing in this section shall be deemed to allow the use of a shoring, bracing, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this section shall be construed to impose a tort liability on the City, the Design Consultant, the Construction Manager, nor any of their agents, consultants, or employees. The City's review of the Contractor's excavation plan is only for general conformance to the Construction Safety Orders.

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

- F. Safety Emergencies - In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the Construction Manager, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Construction Manager prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.
- G. Safety Violations - Should the Contractor fail to correct a condition, the City shall have the right to notify the Contractor through the Construction Manager that an unsafe condition may exist and must be corrected or the work in question can be stopped in accordance with Section 00700-6.06, **SUSPENSION OF WORK**, until the condition is corrected to the satisfaction of the City. No extension of time or additional compensation will be granted as a result of any stop order so issued. The notification and suspension of such work or the failure to provide such notification and suspension by the City shall not relieve the Contractor of its sole responsibility and liability for safety.

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

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

requirements included herein. The Contractor shall notify all equipment suppliers and subcontractors of the provisions of this paragraph.

- I. Confined Spaces – The Work requires work in confined spaces and requires compliance with CAL/OSHA and Federal OSHA requirements. Confined spaces for the purposes of this section shall be as defined by the Division of Industrial Safety. Notwithstanding any classifications relative to the Tunnel Safety Orders, work within confined spaces of this project is subject to the definitions and applicable provisions of Section 5156 et. seq., Title 8, Division 1, Chapter 4, Subchapter 7, Group 16, Article 108 of California Code of Regulations. Including exposure to hydrogen sulfide, methane, carbon dioxide and other gases and vapors commonly found in municipal sewers which could have, or has the potential of having Immediate Danger to Life or Health Conditions (IDLH).
- J. Public Safety and Convenience - The Contractor shall conduct his work so as to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work and to ensure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Construction Manager and the proper governmental authority. Fire hydrants on or adjacent to the work shall be accessible to firefighting equipment. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

4.08 PROVISIONS FOR HANDLING EMERGENCIES

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

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

4.09 NONSTANDARD WORKING HOURS

The Contractor may be required to prosecute the Work at night or outside of the normal working hours defined in **Section 02010-3.1E (SUGGEST EDIT 02010 WHICH HAS WORKING HOURS, THAT ARE INCORRECT.**). Such work may be required due to project and/or operational constraints as defined in Section 01110, **SUMMARY OF WORK**, or if emergencies arise as provided for in Section 00700-4.08, **PROVISIONS FOR HANDLING EMERGENCIES**. When required, ordered, or permitted to work at

night, the Contractor shall provide sufficient and satisfactory lighting and other facilities therefore. For work outside of the normal working hours, the Contractor shall receive no extra payment, but compensation shall be considered as having been included in the price stipulated for the Work, except for authorized work performed outside of the Contract requirements.

4.10 COOPERATION WITH OTHER CONTRACTORS

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

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

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

Section 01110, **SUMMARY OF WORK**, indicates anticipated other potential construction activities within or adjacent to Work to performed in this Contract.

5 ARTICLE 5 - CONTROL OF WORK AND MATERIAL

5.01 MEANS, METHODS AND APPLIANCES

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

5.02 CHARACTER OF WORKERS

None but competent forepersons and workers shall be employed on work requiring special qualifications; and, when required by the Construction Manager, the Contractor shall remove from the work any person who commits trespass, or is, in the opinion of the

Construction Manager, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. Such discharge shall not be the basis of any claim for compensation or damages against the Construction Manager, the City, or any of its officers or representatives.

5.03 MATERIALS AND WORKMANSHIP

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

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

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

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

5.04 EXISTING UTILITIES

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

- B. Utility Location - It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been

marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this section.

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

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

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

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

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

delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

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

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

6 ARTICLE 6 - PROGRESS OF THE WORK

6.01 COMMENCEMENT OF WORK

Within thirty (30) calendar days after receipt of the required bonds and evidences of insurance and the executed Agreement from the Contractor, written Notice to Proceed will be given by the City to Contractor. Notwithstanding other provisions of the Contract, the Contractor shall not be obligated to perform work, and the City shall not be obligated to accept or pay for work performed by the Contractor, prior to Notice to Proceed. The Contractor shall provide the required Contract bonds and evidences of insurance prior to Notice to Proceed and commencing work at the Site.

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

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

6.02 CONTRACT TIME

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

6.03 DELAYS

- A. Notice of Delays - When the Contractor foresees a delay in the prosecution of the Work and, in any event, immediately upon the occurrence of a delay, and in any event no later than five days from the event giving rise to the delay, the Contractor shall notify the Construction Manager in writing of the probability of the occurrence and the estimated extent of the delay, and its cause. The Contractor shall take immediate steps to prevent, if possible the occurrence or continuance of the delay. The Contractor agrees that no claim shall be made for delays, which are not called, to the attention of the Construction Manager at the time of their occurrence.
- B. Non-Excusable Delays - Non-excusable delays in the prosecution of the Work shall include delays which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors at any tier level, or suppliers. The Contractor shall receive no compensation for such delay.
- C. Excusable Delays - Excusable delays in the prosecution or completion of the Work shall include delays which result from causes beyond the control of the Contractor and City and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors, at any tier level, or suppliers. The Contractor shall receive no compensation for such delay, but the Contract Time may be extended as provided in Section 6.04. Excusable delays are as further defined below.
 - 1. Abnormal Delays - Delays caused by acts of god, fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and shortages of materials shall be considered as excusable delays insofar as they prevent the Contractor from proceeding with at least seventy-five (75) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest Favorably Reviewed Progress Schedule.
 - 2. **Weather Delays** - Should unusual inclement weather conditions or the conditions resulting from weather prevent the Contractor from proceeding with seventy-five (75) percent of the normal labor and equipment force engaged in the current critical activity item on the latest Favorably Reviewed Progress Schedule for a period of at least five (5) hours per day toward completion of such operation or operations, and the crew is dismissed as a result thereof, it shall be a weather delay day.
 - 3. Material Shortages - Upon the submission of satisfactory proof to the Construction Manager by the Contractor, shortages of material may be acceptable as grounds for granting a time extension. In order that such proof may be satisfactory and acceptable to the Construction Manager, it must be demonstrated by the Contractor that the Contractor has made every effort to obtain such materials from all known sources within reasonable reach of the proposed Work. Only the physical shortage of material, caused by unusual circumstances, will be considered under these provisions as a cause for extension of time, and no consideration will be given to any claim that material could not be obtained at a reasonable,

practical, or economical cost or price, unless it is shown to the satisfaction of the Construction Manager that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and usual practices in obtaining such quantities. A time extension for shortage of material will not be considered for material ordered or delivered late or whose availability is affected by virtue of the mishandling of procurement. The above provisions apply equally to equipment to be installed in the Work.

- D. **Compensable Delays** - Compensable delays in the prosecution or completion of the Work shall include delays that occur through no fault of the Contractor and prevent the Contractor from proceeding with at least seventy-five (75) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest Favorably Reviewed Progress Schedule due to the following cause(s):
1. Delays due solely to the actions and/or inactions of the City.
 2. Delays due to differing site conditions as defined in Section 00700-7.02, **DIFFERING SITE CONDITIONS**.
 3. Delays due to other contractors employed by the City who interfere with the Contractor's prosecution of the Work as defined above.
- E. **Concurrent Delays** - Concurrent delays are those delay periods when the prosecution of the Work is delayed during the same period of time due to causes from a combination of the delays defined in Sections 00700-6.03B, **Non-Excusable Delays**, 00700-6.03C, **Excusable Delays**, or 00700-6.03D, **Compensable Delays**. During such concurrent delay periods, time extensions will be granted in accordance with Section 00700-6.04, **TIME EXTENSIONS**; however, the Contractor shall not be compensated for its overhead costs as defined in Section 00700-6.04C, **Indirect Overhead**, and the City shall not assess its actual costs as defined in Section 00700-6.04A, **Non- Excusable Delays**.

6.04 TIME EXTENSIONS

- A. **Non-Excusable Delays** - The City, at its sole option, may grant an extension to milestone or completion dates for non-excusable delays. If the City grants an extension of time for non-excusable delays, the Contractor agrees to pay the City's actual costs, including charges for engineering, inspection and administration incurred during the extension.
- B. **Excusable or Compensable Delays** - If the Contractor is delayed in the performance of its Work as defined in Sections 00700-6.03C, **Excusable Delays**, or 00700-6.03D, **Compensable Delays**, then milestone and Contract completion dates may be extended by the City for such time that, in the City's and Construction Manager's determination, the Contractor's completion dates will be delayed, provided that the Contractor strictly fulfills the following:

1. The Contractor shall provide notification, in accordance with Section 00700-6.03A, **Notice of Delays**, and submit in writing a request for an extension of time to the Construction Manager stating at a minimum the probable cause of the delay and the number of days being requested. The time extension request shall be submitted in accordance with the requirements of Section 01310-1.06, **TIME IMPACT ANALYSES**.
2. If requested by the Construction Manager, the Contractor shall promptly provide sufficient information to the Construction Manager to assess the cause or effect of the alleged delay, or to determine if other concurrent delays affected the Work.
3. Weather Delays - The Contractor will be granted a non-compensable time extension for weather caused delays, pursuant to Section 00700-6.03 C2, **Weather Delays**, over and above an allowance as provided for in Section 00800-1.03, **WEATHER DAYS**. No compensable time extensions for weather delays will be granted until the total number of weather days exceeds this allowance.

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

During such extension of time, neither extra compensation for engineering, inspection, and administration nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and City that time extensions due to excusable or compensable delays will be granted only if such delays involve the current critical activity item(s) on the latest Favorably Reviewed Progress Schedule.

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

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

The compensation described in Section 01135-1.05, **MARK-UP ALLOWANCES**, includes provisions for reimbursement of indirect overhead expenses for Change Order work. Compensation as described in this section shall reasonably consider the indirect overhead included in the Mark-Up Allowance, as follows:

1. If City and Contractor agree that the Mark-Up Allowance does not provide sufficient compensation for a compensable delay associated with changed work, this section shall apply.

2. Upon application of this section, an amount equal to the entire Mark-Up Allowance for all Change Order work shall be deducted from the indirect overhead compensation as calculated based on Sections 00700 6.04 C3 (Indirect Field Overhead) and 6.04 C4 (Indirect Home Office Overhead) below.

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

Payment to the Contractor for indirect overhead expenses will be made only for the extended Contract Time granted for Compensable Delay(s) that run following the expiration of the original Contract Time plus any time extensions granted for delays other than Compensable Time extensions.

3. Indirect Field Overhead - For those allowable delay periods as defined in Section 00700-6.04C, **Indirect Overhead**, the Contractor shall be reimbursed for its indirect field overhead based on:
 - a. Actual invoice costs for on-site field offices and temporary utilities as described in Section 01500, **TEMPORARY FACILITIES AND CONTROLS**.
 - b. Actual indirect labor costs, as determined consistent with Section 01135-1.03, **FORCE ACCOUNT PAYMENT**, for field office staff.
 - c. Fair rental values acceptable to the Construction Manager as described in Section 01135-1.03, **FORCE ACCOUNT PAYMENT**, for construction equipment idled due to the delay.
4. Indirect Home Office Overhead - For those allowable delay periods as defined in Section 00700-6.04C, **Indirect Overhead**, the Contractor shall be reimbursed for its unabsorbed home office overhead based on the following formula:

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

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

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

6.05 LIQUIDATED DAMAGES

- A. Owner and the Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in Section 00800-1.01, **TIME ALLOWED FOR COMPLETION**, and required milestone work in Section 00800-1.02 herein, plus any extensions thereof allowed in accordance with Section 00700-6.04 of the General Conditions. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the Owner will sustain in the event of and by reason of the Contractor's failure to fully perform the Work or to fully perform all of its Contract obligations that have accrued by the time for completion as specified in Section 00800-1.01 herein and/or as specified for completion of any scheduled operations or works described in Section 00800-1.02. It is, therefore, agreed in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the Owner liquidated damages in the amount set forth in Section 00800-1.02, **DAMAGES FOR DELAYS**, per day for each and every calendar day that expires after the time for completion specified in Section 00800-1.01 herein and/or as specified for completion of any scheduled operations or works described in Section 00800-1.02 except as otherwise provided by extension of time pursuant to Section 00700-6.04 of the General Conditions. It is further understood and agreed in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time this Contract was made, and that the Owner may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor.
- B. Liquidated damages will continue to accrue at the stated rate until Substantial Completion of the Work. Accrued liquidated damages may be deducted by the Owner from amounts due or that become due to the Contractor for performance of the Work. Liquidated damages may not be waived or reduced by the Owner unless expressly waived or reduced in writing by the Construction Manager.

6.06 SUSPENSION OF WORK

- A. If the Contractor fails to correct defective work as required by Section 00700-5.03, **MATERIALS AND WORKMANSHIP**, or fails to carry out the Work in accordance with the Contract Documents or any other applicable rules and regulations, the City, by a written order of the City's representative or signed personally by an agent specifically so empowered by the City, in writing, may order the Contractor to stop the Work, or any portion thereof. The suspension of Work shall remain in effect until the cause for such order has been eliminated. This right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity. All delays in the Work occasioned by such stoppage shall not relieve the Contractor of any duty to perform the Work or serve to extend the time for its completion. Any and all necessary corrective work done in order to comply with the Contract

Documents shall be performed at no cost to the City. The City's concurrence that the condition or cause has been eliminated will be provided in writing to the Contractor.

- B. In the event that a suspension of Work is ordered, as provided in this paragraph, the Contractor, at its expense, shall perform all work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public, pedestrian, and vehicular traffic, during the period of such use by suspension. Should the Contractor fail to perform the Work as specified, the City may perform such work and the cost thereof may be deducted from monies due the Contractor under the Contract.
- C. The City shall also have authority to suspend the Work wholly or in part, for such period as the City may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for the City's own convenience. Such temporary suspension of the Work will be considered justification for time extensions to the Contract in an amount equal to the period of such suspension if such suspended work includes the current critical activity on the latest Favorably Reviewed Progress Schedule. The Contractor as directed by the City shall provide the provisions as stipulated in Section 00700-6.06, **SUSPENSION OF WORK**, above. Such additional work shall be compensated as provided for in Section 00700-Article 7, **CHANGES IN THE WORK**.

6.07 RIGHT TO TERMINATE CONTRACT

- A. Termination for Default
 - 1. In the event of default by the Contractor, the City may give 10 Days written notice to the Contractor of City's intent to terminate the Agreement and provide the Contractor an opportunity to remedy the conditions constituting the default. It will be considered a default by the Contractor whenever Contractor shall:
 - a. Declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors;
 - b. Fail to provide materials or workmanship meeting the requirements of the Contract Documents;
 - c. Disregard or violate provisions of the Contract Documents or Construction Manager's instructions;
 - d. Fail to prosecute the Work according to the accepted progress schedule; or
 - e. Fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract Documents; or
 - f. Fail to provide a consistently safe work place and follow the Contractor's approved safety plan.
 - 2. If the Contractor fails to remedy the conditions constituting default within the time allowed, the CITY may then issue the Notice of Termination.

3. In the event the Agreement is terminated in accordance with the above provisions of Paragraph 6.07, the City may take possession of the Work and may complete the Work by whatever method or means the City may select. The cost of completing the Work will be deducted from the balance which would have been due the Contractor had the Agreement not been terminated and the WORK completed in accordance with the Contract Documents. If such cost exceeds the balance which would have been due, the Contractor shall pay the excess amount to the City. If such cost is less than the balance which would have been due, the Contractor shall have no claim to the difference.

B. Termination of Agreement by City (For Convenience)

1. The City may, without cause and without prejudice to any other right or remedy of the City, terminate the Agreement at any time by providing Contractor a written Notice of Termination. In such a case, the Contractor shall have no Request for Change Orders or claims against the City except for (i) the value of Work performed up to the date the Agreement is terminated and (ii) the cost of materials and equipment on hand, in transit, or on definite commitment, as of the date the Agreement is terminated, which would be needed in the Work and which meet the requirements of the Contract Documents.
2. The value of Work performed and the cost of materials and equipment delivered to the site, as mentioned above, will be determined by the City in accordance with the procedure prescribed for the making of the final Application for Payment under Article 8 below.
3. If a Notice of Termination issued by City for default under the provision of Paragraph 15.2 is found by a court (or other tribunal having jurisdiction) to be in violation of said provisions, the termination shall be deemed to be a termination for the City's convenience under the provisions of this Paragraph 15.3, and all of the provisions of this Article relating to a Notice of Termination issued under Paragraph 15.3 shall apply.
4. After receipt of Notice of Termination, and except as directed by the City, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice of Termination.

- b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality and safety called for under the Contract Documents.
- c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety of the public (including the occupants of any adjoining properties).
- d. Terminate all subcontracts to the extent that they relate the portions of the Work terminated.
- e. Place no further subcontracts or orders, except as necessary to complete any Work specified in the Notice of Termination.

6.08 SUSPENSION, TERMINATION, OR CHANGES IN WORK DUE TO LITIGATION

- 1. If all Work is suspended, delayed, or interrupted by an order of a court of competent jurisdiction, such suspension, delay or interruption will be considered to be for the convenience and benefit of the City under the provisions of Paragraph 15.1, except where the order is determined by the City to have resulted from a failure or refusal of the Contractor to comply with this Agreement or any statute, rule, regulation, or decision directly applicable to performance of the Work in effect at the time of contract award, in which case the suspension, delay or interruption will be considered to be a suspension for failure of the Contractor to carry orders under the provisions of Paragraph 15.1.
- 2. If pursuant to court order, the City is temporarily or permanently prohibited from requiring the Contractor to perform any portion of the Work, the City Representative or Construction Manager may eliminate the enjoined Work pursuant to Paragraph 10.1.

7 ARTICLE 7 - CHANGES IN THE WORK

7.01 CHANGE ORDERS

- A. Without invalidating the Contract and without notice to sureties or insurers, the City through the Construction Manager, may at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Directive, Field Order, or Change Order. A Change Order will not be issued for a Field Directive unless the Construction Manager concurs with an appeal by the Contractor that such Field Directive is a change in the scope of the Contract. The

Contractor shall comply promptly with the requirements for all Change Orders, Field Orders, or Field Directives. The work involved in Change Orders shall be executed under the applicable conditions and requirements of the Contract Documents. If any Field Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made by issuing a Change Order. By the acceptance of a Change Order, the Contractor waives any claim for additional time, not included in the Change Order, for the work covered by that Change Order. Additional or extra work performed by the Contractor without written authorization of a Field Order or Change Order will not entitle the Contractor to an increase in the Contract Price or an extension of the Contract Time.

- B. Compensable extra work shall be that work required for the completed project, but not shown or detailed on the Contract Drawings, and not called for in the Contract Documents, and not constituting “incidental work” as defined in Section 00700-1.04, **PLANS AND SPECIFICATIONS**. Such work shall be governed by all applicable provisions of the Contract Documents. In giving instructions, the Construction Manager shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the purposes of the Work; but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the City through the Construction Manager, and no claim for an addition to the total amount of the Contract shall be valid unless so ordered.
- C. In case any change increases or decreases the work shown, the Contractor shall be paid for the work actually done at a mutually agreed upon adjustment to the Contract price, based upon the provisions of Section 01135, **MODIFICATION PROCEDURES**.
- D. If the Contractor refuses to accept a Change Order, the City may issue it unilaterally. The Contractor shall comply with the requirements of the Change Order. The City shall provide for an equitable adjustment to the Contract, and compensate the Contractor accordingly. If the Contractor does not agree that the adjustment is equitable, it may submit a claim in accordance with Section 00700-7.03, **RESOLUTION OF DISPUTES**.

7.02 DIFFERING SITE CONDITIONS

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

- A. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I disposal site in accordance with provisions of existing law.
- B. Subsurface or latent physical conditions at the site differing from those indicated in the Contract documents.

- C. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

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

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

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

7.03 RESOLUTION OF DISPUTES

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

- A. Notice - If the Contractor disagrees with the Construction Manager's decision in Section 00700-1.06, **CONTRACT INTERPRETATION BY THE CONSTRUCTION MANAGER**, or in any case where the Contractor deems additional compensation or a time extension to the Contract Time is due the Contractor for work or materials not covered in the Contract or which the Construction Manager has not recognized as extra work, the Contractor shall notify the Construction Manager, in writing, of its intention to make claim. Notice pertaining to decisions provided in Section 00700-1.06, **CONTRACT INTERPRETATION BY THE CONSTRUCTION MANAGER**, or such other determinations by the Construction Manager shall be delivered in writing to the Construction Manager within no more than ten (10) days of receipt of such decision and prior to the commencement of such work. All other notices for extra work shall be filed in writing to the Construction Manager prior to the commencement of such work. Written notice shall include the words "Notice of Potential Claim" in the

subject line. Such Notice of Potential Claim shall state the circumstances and the reasons for the claim, but need not state the amount.

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

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

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

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

- D. Records of Disputed Work - In proceeding with a disputed portion of the Work, the Contractor shall keep accurate records of its costs, separate from costs incurred performing contract work, and shall make available to the Construction Manager, a daily summary of the hours and classification of equipment and labor utilized on the disputed work, as well as a summary of any materials or any specialized services which are used. Such information shall be submitted to the Construction Manager on a monthly basis, receipt of which shall not be construed as an authorization for or acceptance of the disputed work.

- E. Submission of Claim Costs - Within thirty (30) days after the last cost of work for which the Contractor contends it is due additional compensation is incurred, but if costs are incurred over a span of more than thirty (30) days, then within fifteen (15) days after the thirtieth (30th) day and every month thereafter, the Contractor shall submit to the Construction Manager its costs incurred for the claimed matter. Claims shall be made in itemized detail and should the Construction Manager be dissatisfied with the format or detail of presentation, upon request for more or different information, the Contractor will promptly comply, to the satisfaction of the Construction Manager. If the additional costs are in any respect not knowable with certainty, they shall be estimated as best can be done. The Construction Manager shall have the right as provided in Section 01135-1.07, **COST PRICING DATA AND ACCESS TO RECORDS**, to review the Contractor's records pertaining to a submitted claim. In case the claim is found to be just, it shall be allowed and paid for as provided in Section 01135, **MODIFICATION PROCEDURES**.
- F. Claim Meetings - From time to time the Contractor may request or the Construction Manager may call a special meeting to discuss outstanding claims should it deem this a means of possible help in the resolution of the claim. The Contractor shall cooperate and attend prepared to discuss its claims, making available the personnel, subcontractors and suppliers necessary for resolution, and all documents which may reasonably be requested by the Construction Manager.
- G. Resolution of Claims - Claims pertaining to this Agreement for three hundred and seventy-five thousand dollars (\$375,000) or less which cannot be resolved between the parties shall be resolved pursuant to the provisions of Public Contract Code commencing at Section 20104.
1. Claims Not Exceeding \$375,000 - Said Code sections provide in part that: Under the law (starting at Public Contract Code Section 20104.2) construction claims of \$375,000.00 or less on local public agency construction contracts must be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment.

The City must respond in writing to any written claim of three hundred seventy-five thousand dollars (\$375,000) or less within sixty (60) days [or, in the case of claims of less than fifty thousand dollars (\$50,000), within forty-five (45) days] of receipt of claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant.

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

The City's written response to the claim, as further documented, shall be submitted to the claimant within thirty (30) days [or, for claims of less than \$50,000, within fifteen (15) days] after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

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

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

2. Claims Exceeding \$375,000 - Unless this Contract provides otherwise, all claims between the City and the Contractor that are not resolved between the parties and are not governed by Public Contract Code Section 20104 shall be resolved according to the procedures established in Public Contract Code Section 20104 with the following exceptions:
 - a. The City must respond in writing to any written claim greater than three hundred seventy-five thousand dollars (\$375,000) within sixty (60) days of receipt of the claim, or may request in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant, or may advise the Contractor in writing within thirty (30) days of receipt of the claim when the review and response to the claim will be furnished.
 - b. The arbitration proceedings established in Public Contract Code Section 20104.4(b) and specified in Section 00700-7.03 G3, **Civil Action Proceedings**, shall only apply if both the City and Contractor mutually agree to arbitration.
3. Civil Action Proceedings - If a civil action is filed to resolve the claim, then between thirty (30) and sixty (60) days after the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by the parties. The parties are given fifteen (15) days to select a disinterested third person as mediator. Mediation must commence

within thirty (30) days of submittal and conclude within fifteen (15) days of commencement unless the time is extended for good cause by the court.

4. Mediation of Disputes - All disputes among the parties arising under this Agreement shall be mediated before resorting to arbitration or Court action. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial neutral mediator who is authorized to facilitate the resolution of the dispute but who is not empowered to impose a settlement on the parties. The mediation fee, if any, shall be divided equally among the parties. Before the mediation begins, the parties agree to sign a document limiting the admissibility and arbitration or any civil action of anything said, any admission made, and any documents prepared in the course of the mediation, consistent with Evidence Code Section 1152.5 or any successor statute. The filing of a judicial action to enable the imposition of a receivership, injunction or other provisional remedy shall not constitute a waiver of the right to mediate under this provision. The mediation shall take place in Marin County, California. The mediator shall be experienced in construction law. At least 30 days before mediation, the parties will exchange those documents that are reasonably necessary to evaluate the issues and arrive at an informed resolution of the issues.
5. If the matter remains in dispute, the case must be submitted to judicial arbitration pursuant to procedures set forth in the Code of Civil Procedure commencing at Section 1141.10. Discovery is permitted consistent with the rules pertaining to judicial arbitration.
6. Should either party to this Contract bring legal action against the other, the case shall be handled by a court of competent jurisdiction in Marin County, California.

8 ARTICLE 8 - PAYMENT

8.01 BASIS OF PAYMENT

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

No compensation will be made in any case of loss of anticipated profits. This includes the event of the termination of the Contract, and therefore no compensation will be made to the Contractor for the loss of anticipated profits

associated with the terminated work. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.

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

- B. Payment for Patents and Patent Infringement - All fees or claims for any patented invention, article, or arrangement that may be used upon, or in, any manner connected with the performance of the Work or any part thereof shall be included in the price bid for doing the work, and the Contractor and its sureties shall defend, protect, and hold the City, the Construction Manager, and Design Consultants, together with all their officers, agents, and employees harmless against liability of any nature or kind for any and all costs, legal expenses, and damages made for such fees or claims and against any and all suits and claims brought or made by the holder of any invention or patent, or on account of any patented or unpatented invention, process, article, or appliance manufactured for or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Contract. Before final payment is made on the Contract, the Contractor shall furnish an affidavit to the City regarding patent rights for the project. The affidavit shall state that all fees and payments due as a result of the work incorporated into the project or methods utilized during construction have been paid in full. The Contractor shall certify in the affidavit that no other fees or claims exist for work in this project.
- C. Payment of Taxes - The Contractor shall pay and shall assume exclusive liability for all taxes levied or assessed on or in connection with its performance of this Contract, whether before or after acceptance of the Work, including, but not limited to, State and local sales and use taxes, Federal and State payroll taxes or assessments, and excise taxes, including any taxes or assessments levied or increased during the performance period of the Work. No separate allowance will be made therefore, and all costs in connection therewith shall be included in the total amount of the Contract price.

8.02 PARTIAL PAYMENTS

- A. General - In consideration of the faithful performance of the Work prosecuted in accordance with the provisions of these Specifications and the Contract, the City will pay the Contractor for all such work installed on the basis of unit prices and/or percentage completion of lump sum Bid Items. Amounts earned for lump sum work will be based on accepted Cost Breakdown (Section 01125, **MEASUREMENT AND PAYMENT**).

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

be made for temporary construction unless specifically provided for in the Contract Documents.

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

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

1. The Construction Manager shall review the submitted estimates, as soon as practicable after receipt for the purpose of determining that the estimates are a proper request for payment, and shall prepare a certified estimate of the total amount of work done.
2. Any request for payment determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days after receipt. A request for payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the request for payment is not proper.
3. The number of days available to the City to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the City exceeds the seven (7) day return requirement set forth in Section 00700-8.02 A2 above.

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

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

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

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

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

1. Equipment and materials will only be eligible if given conditional or final acceptance by the Design Consultant and are in apparent compliance with Favorably Reviewed Shop Drawings.
2. Only materials which have received Favorable Review of shop drawings will qualify.
3. Eligible equipment or materials must be delivered and properly stored, protected, and maintained in a manner Favorably Reviewed by the Construction Manager, at the job site or an offsite location acceptable to the Construction Manager.
4. The Contractor's actual net cost for the materials must be supported by paid invoices of suppliers, or other documentation requested by the Construction Manager.
5. At the City's request, Contractor shall obtain an executed security agreement and all necessary UCC-1's as a condition of payment by City.
6. Materials or equipment delivered to the Site less than thirty (30) days prior to their scheduled incorporation in the Work shall not qualify.
7. Final payment shall be made only for materials actually incorporated in the Work and, upon acceptance of the Work, all materials remaining for which advance payments had been made shall revert to the Contractor, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the Work.

8. Partial payments for materials and equipment on hand shall not be deemed to be final payment for the material nor relieve the Contractor of its obligations under the Contract.
- C. Effect of Payment – Payment will be made by Owner based on the Construction Manager’s observations at the Site and the data comprising the progress payment request. Payment will not be a representation that the City has:
1. Made exhaustive or continuous on-site inspections to check the quality or quantity of Work;
 2. Reviewed construction means, methods, techniques, sequences or procedures;
 3. Reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by Owner to substantiate Contractor’s right to payment;
 4. Made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum; or
 5. Accepted all or part of the Work.

8.03 RIGHT TO WITHHOLD AMOUNTS

- A. Retention - The City will withhold from each of the partial payments and retain as part security, ten (10) percent of the amount earned until the final payment.
- B. Other Withholds - In addition to the amount which the City may otherwise retain under the Contract, the City may withhold a sufficient amount or amounts of any payment or payments otherwise due the Contractor, as in its judgment may be necessary to cover:
1. For defective work not remedied.
 2. A reasonable doubt that the Contract can be completed for the balance then unpaid.
 3. Damage to another contractor or third party, or to property.
 4. Failure of the Contractor to maintain Record Documents current as required in Section 01770, **CLOSEOUT**.
 5. Cost of insurance arranged by the City due to cancellation or reduction of the Contractor's insurance.
 6. Failure to submit, revise, resubmit or otherwise conform to the requirements herein for preparing and maintaining a construction schedule as required in Section 01310, **PROGRESS SCHEDULES**.
 7. Failure to make proper submissions, as specified herein.
 8. Amounts due the City from the Contractor.

9. The Contractor's neglect or unsatisfactory prosecution of the Work including additional engineering and administrative costs related to construction and/or shop drawing errors and the failure to clean up.
10. Provisions of law that enable or require the City to withhold such payments in whole or in part.
11. Stop Notice claims filed by Contractor's subcontractors, of any tier, or its material suppliers.

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

8.04 SECURITY SUBSTITUTION FOR WITHHOLDS

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

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

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

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

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

8.05 WARRANTY OF TITLE

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

Nothing contained in this paragraph, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the City. The provisions of this Paragraph shall be inserted in all subcontracts and material contracts, and notice of its provisions shall be given to all persons furnishing materials for the Work when no formal Contract is entered into for such materials.

8.06 SUBSTANTIAL COMPLETION

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

Upon the completion of such corrective work, the Contractor shall so notify the Construction Manager in writing. The Construction Manager shall inspect the Work to determine its acceptability for Substantial Completion and for determination of the status of any other items which are required to meet the terms of Substantial Completion as listed in the Contract Documents. Upon verification that the project is Substantially Complete, the Construction Manager shall prepare a Certificate of Substantial Completion and the Punch List. The Certificate shall establish the date of Substantial Completion and the responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, commencement of warranties required by the Contract Documents, and shall fix the time, not to exceed sixty (60) days, within

which the Contractor shall finish all items on the Punch List or remaining work or administrative requirements accompanying the Certificate. When the preceding provisions have been approved by both the City and the Contractor, they shall sign the Certificate to acknowledge their written acceptance of the responsibilities assigned to them in such Certificate. By such acknowledgment, the Contractor agrees to pay the City's actual costs including, but not limited to, charges for engineering, inspection and administration incurred due to the failure to complete the Punch List within the time period provided in the Certificate of Substantial Completion.

8.07 FINAL INSPECTION AND PAYMENT

Upon completion of the Work, including all items on the Punch List, and upon completion of final cleaning, the Contractor shall so notify the Construction Manager in writing. Upon receipt of the notification, the Construction Manager, the City and/or their authorized representatives will make the final inspection, to determine the actual status of the Work in accordance with the terms of the Contract. If materials, equipment, workmanship or administrative requirements are found which do not meet the terms of the Contract, the Construction Manager shall prepare a Final Inspection List of such items and submit it to the Contractor. Following completion of the work to correct all items in the Final Inspection List the Contractor shall notify the Construction Manager. The Construction Manager shall, in turn, notify the City that the Work has been completed in accordance with the Contract. Final determination of the acceptability of the Work shall be made by the City. After completion of the Work, but prior to its Acceptance by the City, the last partial payment will be made to the Contractor in accordance with Section 00700-8.02, **PARTIAL PAYMENTS**.

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

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

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

Thirty-five (35) days after recording the Notice of Completion of the work involved in the Contract, the City will pay the Contractor in lawful money such sums of money as may be due the Contractor including all sums retained but excluding such sums as have

previously been paid the Contractor or as may be needed to cover outstanding stop notice claims or disputes. This payment will constitute the final payment to the Contractor under this Contract except for outstanding stop notice claims and disputed amounts.

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

END OF SECTION

SECTION 00800

SUPPLEMENTARY GENERAL CONDITIONS

ARTICLE I - MODIFICATIONS TO THE GENERAL CONDITIONS

1.01 TIME ALLOWED FOR COMPLETION

In accordance with the provisions of Section 00700-6.02, **CONTRACT TIME**, Substantial Completion of this Project shall be completed within one-hundred and forty (120) consecutive calendar days from the date established in the Notice to Proceed for the commencement of Contract Time.

1.02 DAMAGES FOR DELAYS

A. General

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

| <u>Item</u> | <u>Dollars Per Day Liquidated Damages</u> |
|------------------------|-------------------------------------------|
| Substantial Completion | \$2,500 |

1.03 WEATHER DAYS

In accordance with the provisions of Section 00700-6.04 B3, **Weather Delays**, an allowance of fourteen (14) working days of weather caused delay have been included in the time allowed for completion. This allowance represents a reasonable assessment of anticipated lost working days based on historical weather patterns. These weather days shall be included in the Contractor's schedule as specified in Section 01310-1.71, **WEATHER CONDITIONS**.

1.04 NOT USED

1.05 CONTRACT ADMINISTRATION

The following project representatives are hereby designated by the City:

A. Name of City Representative:

Loren Umbertis, Public Works Division Manager

Phone: 415-289-4113

Email: lumbertis@ci.sausalito.ca.us

B. Name of Construction Manager:

Riedinger Consulting

Phone: 415-331-2112

Email: constance@riedingerconsulting.com

C. Name of Design Consultant Representative:

Vincent Lattanzio

Phone: 415-447-5214

Email: vince@carducciassociates.com

1.06 CHANGES

The Contractor is notified that the City Manager's may approve change orders which do not exceed \$25,000, with a total limit of \$100,000 per project. Amounts in excess of this limit will require approval by the Sausalito City Council with requisite time to schedule change order reviews and to process approvals.

ARTICLE 2 - INDEMNITY AND INSURANCE

2.01 INSURANCE

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

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

The Contractor shall require insurance coverage and limits of Subcontractors appropriate to the risks associated with their work and shall not allow any subcontractor to commence work on its subcontract until evidence of required insurance has been obtained and verified by the Contractor and submitted to the Construction Manager for the City's review and records. Subcontractors shall furnish original certificates and endorsements as verification of insurance coverage.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

None of the policies of insurance required herein shall be suspended, voided, canceled, except after thirty (30) days' prior notice has been given to the City.

All costs for all insurance shall be included in the Bid.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations under this Contract. The Contractor's Commercial General Liability, Protection and Indemnity and Pollution Liability insurance policies shall be endorsed to state that each policy is primary and shall not contribute with any insurance or self-insurance of the City, the Design Consultant, the Construction Manager, and all of their officers, officials, employees, agents and volunteers (the "Additional Insureds").

Any failure of the Contractor to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

The Contractor shall take out, pay for, and maintain throughout the duration of this Contract and for such additional periods as more specifically required herein the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, the Contractor's agents, representatives, employees or subcontractors.

A. Commercial General Liability, Pollution Liability, Protection and Indemnity for owned and non-owned vessels (if marine equipment and vessels are used) and Automobile Liability Insurance for owned, hired and non-owned automobiles.

1. Additional Insureds - The Commercial General Liability, Protection and Indemnity and Pollution Liability policies of insurance shall be endorsed to name as additional insureds the City of Sausalito, the Design Consultant, the Construction Manager and each of their partners, officers, employees, and agents and coverage provided to such additional insureds. The Commercial General Liability policy shall provide coverage to each of the insureds with

- respect to products/completed operations. All policies shall be written on an occurrence basis.
2. Amount of Coverage - The Commercial General Liability insurance shall provide coverage in the following limits of liability: \$1,000,000 on account of any one occurrence. The limits of coverage for Protection and Indemnity (for marine equipment and vessels) shall be not less than \$1,000,000 on account of any one accident. The Automobile Liability insurance policy shall provide minimum limits of \$1,000,000 per accident. These limits shall apply separately to the Project; if the limits are not project specific, Contractor shall provide insurance with limits double the amounts set forth above.
 3. Subcontractors - The bodily injury and property damage liability insurance shall not be deemed to require the Contractor to have its subcontractors named as insureds in the Contractor's policy, but the policy shall protect the Contractor from contingent liability which may arise from operations of its subcontractors.
 4. Included Coverage - The above Commercial General Liability insurance shall also include the following coverage:
 - a. Premises - Operations.
 - b. Owner's / Independent Contractor's and Contractor's Protective.
 - c. Products - Completed Operations.
 - d. Personal Injury - (False Arrest, Libel, Wrongful Eviction, etc.).
 - e. Broad Form Property Damage – including to the Maximum Extent Possible, coverage for the Assumption of Liability Pursuant to Completed Operations.
 - f. Separation of Insureds / Cross-Liability Provisions.
 - g. Duty to Defend all Insureds.
 - h. Deletion of any Limitation on Coverage for Bodily Injury or Property Damage Arising out of Subsidence or Soil or Earth Movement.
 - i. A provision that the annual general aggregate and the products and completed operations annual aggregate shall apply separately to each Project for which Contractor provides services away from premises owned by or rented to Contractor.
 - j. Pollution Legal Liability Endorsement.

- C. Builder's Risk Insurance - "All Risk or Special Form" Builder's Risk Insurance on the replacement cost basis, in an amount equal to the full replacement cost on a completed value basis, without deductions for depreciation. Such insurance shall be obtained, paid for, and maintained by the Contractor and shall cover, but shall not be limited to, fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft, watercraft or vehicles, vandalism and malicious mischief, theft, collapse, flood and earthquake. This insurance shall name the City, the Design Consultant, the Construction Manager and the Contractor as insureds, as their interests may appear and shall include coverage including, but not by way of limitation, for all damages of loss to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Project site, to construction plant and temporary structures.

Pursuant to Section 7105 of the Public Contract Code, the City requires Contractor to obtain insurance providing full replacement value coverage for any damage to the Work caused by an Act of God, as defined by Section 7105(b)(2) of that Code. Builder's Risk Insurance policies shall contain the following provisions:

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

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

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

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

- D. Proof of Coverage - Contractor shall furnish the City with certificate(s) evidencing issuance of all insurance mentioned herein, copies of the policy declaration or information page(s) and endorsements. The certificate(s) and endorsements for each insurance policy are to

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

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, the Design Consultant, the Construction Manager, and all of their officers, officials, employees and agents; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

- E. Hold Harmless - The City of Sausalito and all officers and employees thereof connected with the Work, including but not limited to the City Council, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence of the City of Sausalito's officers or employees.

- F. Indemnification - To the fullest extent allowed by law, Contractor shall defend, indemnify and hold harmless the City of Sausalito, its elected and appointed officials, the Design Consultant, Construction Manager, their employees and agents (collectively, the

“Indemnified Parties”), from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and other defense costs, resulting from injury to or death sustained by any person (including Contractor's employees), or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with the performance of the Work, regardless of the Contractor's fault or negligence, including any of the same resulting from the alleged or actual negligent act or omission, of an Indemnified Party; except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole or active negligence or willful misconduct of City, its officers, agents, or servants who are directly responsible to City. This indemnification shall extend to claims asserted after termination of this Contract for whatever reason. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist.

- G. In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall be considered necessary by the City, may be retained by the City until disposition has been made of such suits or claims for damage.

2.02 INSURANCE DURING GUARANTEE PERIOD

Contractor shall maintain the above-described worker's compensation, commercial general liability, and property damage insurance in force during the entire period of the Guarantee Period as defined above.

2.03 INJURY OR ILLNESS REPORTS

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

2.04 NOTIFICATION OF INSURANCE COMPANIES

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

ARTICLE 3 - TERMINATION

3.01 TERMINATION FOR DEFAULT

- A. Add this language to the end of Section 00700-6.07A.
1. Payments Withheld. If the City terminates the Contract for one of the reasons stated in paragraph 6.07A.1, the Contractor shall not be entitled to receive further payment until the Work is complete.
 2. Payments Upon Completion. If the unpaid balance of the Contract Sum, including contract retentions, exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the District within thirty days of the City's written demand. This payment obligation shall survive termination or completion of the Contract.

3.02 TERMINATION FOR CONVENIENCE

NOTE: THIS PROVISION REPLACES 00700-6.07.b IN ITS ENTIRETY.

- A. The City may, without cause, order the Contractor in writing to suspend, interrupt or terminate performance of the Work in whole or in part for such period of time as the City may determine. An adjustment may be made for an increase in the cost of performance of the Contract including profit on the increased cost of performance, if any, caused by any

such suspension or interruption or termination. An equitable adjustment may be made of the price or prices specified in the Contract relating to the portion of the Work not suspended, interrupted, or terminated by notice of suspension, interruption, or termination. No adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 2. An equitable adjustment is made or denied under another provision of this Contract.
- B. Any such suspension, interruption, or termination shall be effected by delivery to the Contractor of a written notice of suspension, interruption or termination specifying the extent to which performance of work under the Contract is suspended, interrupted, or terminated and the date upon which such suspension, interruption, or termination becomes effective. The effective date shall be not less than three (3) days after delivery of the written notice. After receipt of the notice of suspension, interruption, or termination, and except as otherwise directed by the City, the Contractor shall:
1. Stop work under the Contract on the date and to the extent specified in the notice of suspension, interruption, or termination;
 2. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under the Contract which is not suspended, interrupted or terminated;
 3. Terminate all orders or subcontracts to the extent they relate to the performance of work suspended, interrupted or terminated by notice of suspension, interruption or termination;
 4. Assign to the City in the manner, at the times, and to the extent directed by the City, all the right, title and interest of the Contractor under the orders and subcontracts so suspended, interrupted or terminated. The City shall have the right, in its discretion, to settle or pay any or all claims arising out of the suspension, interruption, or termination of such orders and subcontracts;
 5. Settle all outstanding liabilities and all claims arising out of such suspension, interruption, or termination of orders and subcontractors, with the approval or ratification of the City to the extent the City may so require. The City's approval or ratification shall be final for all purposes of his clause;
 6. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if directed by the City, the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced as a part

of, or acquired in connection with the performance of the work terminated by the notice of suspension, interruption, or termination, and the completed or partially completed plans, drawings, information, and other property, which, if the contract had been completed, would have been required to be furnished to the City;

7. Use its best efforts to sell, in the manner, at the times, and to the extent, and at the price or prices that the City directs or authorizes, any property of the types previously referred to herein, but the Contractor shall not be required to extend credit to any purchaser and may acquire any such property under the conditions prescribed and at a price or prices approved by the City. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the City may direct;
 8. Complete performance of such part of the Work as shall not have been suspended, interrupted, or terminated by the notice of suspension, interruption, or termination; and
 9. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the City has or may acquire an interest.
- C. After receipt of the notice of suspension, interruption, or termination, the Contractor shall submit to the City a certified suspension, interruption, or termination claim. Such claim shall be submitted promptly but in no event later than sixty (60) days from the effective date of the notice of suspension, interruption, or termination. If the Contractor fails to submit a suspension, interruption, or termination claim within such sixty (60) day period, the City may determine, on the basis of information available to it, the amount, if any, due to the Contractor. The City shall then pay to the Contractor the amount so determined, and that payment shall constitute full compensation for all work performed and costs incurred in connection with the Project.
- D. After receipt of a certified claim, the City and the Contractor may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial suspension, interruption, or termination of the Contract. The amount may include a reasonable allowance for profit on work performed. However, such agreed amount or amounts, exclusive of costs solely attributable to the suspension, interruption or termination, shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract Sum of work not suspended, interrupted, or terminated and any claims the City may have against the

Contractor. Nothing in paragraph E of this section, shall be deemed to limit, restrict, or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

- E. After receipt of a certified claim, if the Contractor and City fail to agree on the amounts to be paid to the Contractor, the City shall determine, on the basis of the information available to it the amount, if any due, the Contractor by reason of the suspension, interruption, or termination and shall pay the Contractor the amounts determined as follows:
1. For all work specified in the Contract which is performed before the effective date of the notice of suspension, interruption, or termination, the total of:
 - a. The reasonable cost to the Contractor, without profit, for all contract Work performed prior to the notice of suspension, interruption, or termination, including the work done to secure the project. In determining the reasonable cost, the City may utilize the schedule of values, contract unit prices, or lump sums, the percentage of Work completed and any other method available to it. For purposes of determining reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. When in the opinion of the City the cost of an item of Work is unreasonably high, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and excessive actual cost shall be disallowed.
 - b. Reasonable cost will include a reasonable allowance for project overhead and general administrative overhead not to exceed a total of ten percent (10%) of direct costs of such work.
 - c. A reasonable allowance for profit on the cost of the work performed as determined under subsection (1) provided the Contractor established to the satisfaction of the City that it would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of the cost of the Work completed.
 - d. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

Design Consultant: Principal-in-Charge, Project Manager, Project Engineer

Construction Manager: Principal-in-Charge, Project Manager, Inspectors(s)

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

ARTICLE 5 - RECORD DRAWINGS AND ADDITIONAL INFORMATION

Any record or other information available at the City's offices regarding existing conditions at the Job Site may be reviewed by the Contractor upon request. The City makes no warranty as to the accuracy of the information available.

ARTICLE 6 - SUBSTANTIAL COMPLETION

Substantial completion of the Project as required by Section 00700-8.06, **SUBSTANTIAL COMPLETION** and 01770 **CLOSEOUT**, requires that the following portions of the Work must be completed in accordance with the requirements of the Contract Documents:

- Completion of the Work as required by the Contract Documents so the City, and the public can occupy and utilize the Project and any areas to which access has been restricted on account of the Work for their intended purpose.
- Completion of the Corrective Work Item List as described in Section 00700-8.06, **SUBSTANTIAL COMPLETION** and 01770 **CLOSEOUT**

- All testing required by the Contract and the City's General Provisions and Specifications has been successfully completed.
- All items related to health and safety of Owner operations, maintenance staff and the public, including warning signs, guardrails, safety equipment shall be complete.
- All record drawings have been submitted, updated, reviewed and approved.

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

- Final Site Clean-Up
- Plant Establishment Maintenance Period
- Restriping of roadways
- Record drawings

- Completion of the Punch List prepared by the Construction Manager in accordance with Section 00700-8.06, **SUBSTANTIAL COMPLETION** and 01770 **CLOSEOUT**.

END OF SECTION