



**CITY OF EAST PALO ALTO, CALIFORNIA**

**INVITATION FOR BIDS FOR**  
Slope Repair at San Francisquito Creek

**PUBLIC WORKS PROJECT NO. SP-15**

**DATE OF AD PUBLICATION**

WEDNESDAY, OCTOBER 11, 2023

**BIDS DUE:**

3:00PM

10/24/2023

At the Office of the City Clerk  
City of East Palo Alto  
2415 University Avenue  
East Palo Alto, CA 94303

Contact Person During Bidding Period:  
Batool Zaro, Associate Engineer  
(650) 388-8921

[bzaro@cityofepa.org](mailto:bzaro@cityofepa.org)

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**CITY OF EAST PALO ALTO**  
**I. NOTICE INVITING BIDS**

**Slope Repair at San Francisquito Creek**  
City Project No. SP-15

SEALED BIDS will be received by the City of East Palo Alto City Hall, 2415 University Avenue , East Palo Alto, California 94303, 10/24/2023 on 3 pm at which time they will be publicly opened in the City Hall, 2415 University Avenue, East Palo Alto, Ca, via a Zoom Call (Meeting ID: 814 9583 3725 Passcode: 273119) which will be sent to all plan holders on the bidders list and read for performing work as follows:

Furnishing all labor, materials, and equipment and performing all work necessary and incidental to the completion of the project known as Slope Repair at San Francisquito Creek (the "Project") consisting of mobilization site preparation, utility work, concrete work, and so on according to plans and specifications prepared by the City of East Palo Alto.

Project is to be completed within a total maximum of thirty (30) working days. Once the notice to proceed is issued, the contractor is responsible for completing the work within the allocated time.

Bid documents can be obtained by downloading the set from the City website at [www.cityofepa.org](http://www.cityofepa.org) under RFP-RFQ-Bids. Questions should be directed to Batool Zaro, Associate Engineer, (650)388-8921, [bzaro@cityofepa.org](mailto:bzaro@cityofepa.org).

Bid Security in an amount not less than ten percent (10%) of the total bid dollar amount and conforming to the prescribed bidding procedures is required to be submitted with each bid.

Pursuant to the provisions of the California Labor Code Section 6707, if applicable to this job, each bid submitted in response to this Notice Inviting Bids 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.

Pursuant to Public Contract Code Section 22300, for monies earned by the Contractor and withheld by the City of East Palo Alto to ensure the performance of the contract, the Contractor may, at his or her option, choose to substitute securities meeting the requirements of Section 22300.

To be considered, all bidders shall:

- Be 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 project. The general class or type of work called for under the Contract requires a class "A" or "C27" license.
- Perform with their own organization's work amounting to at least (25)% of the contract price, except specialty items.
- Have completed a minimum of three (3) projects involving work of similar type and complexity in the last five years.
- Meet other mandatory bid requirements set forth in the bid documents.

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## **II. INSTRUCTIONS TO BIDDER**

1. Preparation of Bid – Bid shall be made on Bid Forms inserted in the cover of this Invitation for Bids. The Bid Forms include the documents entitled Bid, Bid Schedule, Subcontractor List, Bidder's Information, Statement of Qualifications, and Non-Collusion Affidavit. Bidder shall enter all requested information in the appropriate spaces on the Bid Forms. No oral, telephone, facsimile or electronic bids will be accepted. All costs of bid preparation shall be borne by the bidder.
2. Mandatory Qualifications – In order for a bid to be considered responsive to this invitation for bids, the minimum experience of the bidder shall be the completion of three (3) projects of similar type and complexity, and value not less than \$400,000.00. Documentation of mandatory qualifications shall be made on the document entitled "Bidder's Information" included in the Bid forms.
3. Pre-Bid Conference – N/A
4. Examination of Bid Documents – The Bid Documents consist of this Invitation for Bids, each and every document listed in the Table of Contents of the invitation, any documents referenced in the specifications, and any addenda which may have been issued. Bidder shall thoroughly examine and be familiar with all Bid Documents, including legal and procedural aspects. Submission of a bid shall constitute bidder's acknowledgment upon which the City may rely that bidder has thoroughly examined and is familiar with the Bid Documents. Failure or neglect of bidder to receive or examine all or part of the Bid Documents shall in no way relieve the bidder from any obligations with respect to this bid invitation or any resultant contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any part of the Bid Documents.
5. Inspection of Site – Bidder must examine and judge for itself the location of the proposed work and the nature and extent of the work to be done. The technical specifications, including drawings, plans, maps, diagrams and/or other graphic representations of the project, show conditions as they are supposed or believed by City to exist at the site, but the conditions shown do not constitute a representation by City that they actually exist. Utilities (underground or above-ground), buildings, structures and other improvements may be within or adjacent to the project site. These may or may not be included in the project's technical specifications. Bidder is required to inspect the project location to satisfy itself, by examination or other appropriate means, of the actual conditions at the site.  
  
Submission of a bid shall constitute a representation by bidder that it has visited and examined the project site and is relying on its own examination and knowledge of the site in making its bid, and not on any representation by City. No claim for additional compensation shall be allowed that is based upon a failure to examine, or lack of knowledge of, the work site.
6. Interpretation of Bid Documents and Addenda – Should a bidder discover conflicts or ambiguity in the bid documents that require a decision or explanation, bidder may request an interpretation. Such a request shall be made in writing and delivered to the person identified on the cover page of this bid invitation no later than five (5) working days before the deadline for receipt of bids. Every interpretation made to bidders will be in the form of an Addendum issued by the City. Addenda, if issued, will be sent as promptly as possible to all parties that have been issued bid documents. All such Addenda will become part of the bid documents and shall be binding in the same way as if originally written in the bid documents. Only properly issued addenda shall be binding upon City, any oral and/or other form of interpretation or clarification will have no legal or contractual effect. Bidders shall acknowledge the receipt of Addenda on the Bid Forms.

7. Bid Security – Bidder shall submit bid security with the bid in an amount equal to at least ten percent (10%) of the total bid amount (Base Bid plus Alternates, if any) and in the form of a certified check, cashier's check or surety bond issued by an admitted surety insurer authorized to conduct business in the State of California. *The total amount of the successful bidder's bid security shall be forfeited to the City if the bidder fails to execute the contract and furnish bonds and insurance as required by the bid documents within ten (10) calendar days after being notified in writing by City that the contract award has been made.*
8. Bonds and Insurance – The successful bidder shall furnish performance and payment (labor and materials) bonds, each in an amount equal to one hundred percent (100%) of the total contract price (Base Bid plus Alternates, if any) and issued by an admitted surety insurer authorized to operate in the State of California. The only bonds acceptable to the City shall be those included with the bid documents. The successful bidder shall also maintain throughout performance of the work the insurance coverage specified in the bid documents.
9. Employment of Apprentices – The provisions of Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code concerning the employment of apprentices are applicable during the performance of the work described in the bid documents.
10. Wage Rates – Pursuant to Sections 1770, 1771 and 1774 of the California Labor Code, the successful bidder shall pay not less than the prevailing rate of per diem wages as determined by the Director of the State of California Department of Industrial Relations. Copies of such prevailing wage rates are available for review at the City. Wage rates can also be obtained through the California Department of Industrial Relations website at:  
<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

Bidders shall promptly notify the person identified on the cover page of this bid invitation, in writing, about all labor classifications not listed in the prevailing wage determinations but necessary for the performance of the work described in the bid documents.

The successful bidder/contractor, and each subcontractor shall keep accurate payroll records, and comply in all respects with Labor Code section 1776, including the timely response to written notices requiring copies of such records, as provided for in such section. In the event the contractor or subcontractor fails to comply within the ten day period, that contractor or subcontractor shall forfeit one hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, as provided by Labor Code section 1776(h).

11. Contractor Registration with the State of California – In order to be considered for contract award, Contractor and any Subcontractors must be registered with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program. Contractors shall list all applicable DIR registration numbers on the Bid Form.
12. Utilization of Local Workforce in Construction Projects – When possible, it is encouraged that the contractor shall utilize local workforces, including State-certified apprentices, as a means of supporting economic opportunities for all members of the community.
13. Sheeting, Shoring and Bracing (As Applicable) – In accordance with the provisions of Section 6707 of the California Labor Code, when bidding on a project that calls for trenches or open excavations, bidder shall specify on the Bid Forms that the item price for such work includes adequate sheeting, shoring and bracing, or equivalent method, to protect its employees and others from injury to life or limb, in conformance with applicable California Construction Safety Orders. This section shall not be construed to impose tort liability on the City or any of its employees or agents.
14. Subcontractors – Bidder shall complete the "List of Subcontractors" included in the Bid Forms. Bidder shall include all requested information for each subcontractor who will perform work or

render service to the bidder during the performance of the work described in the bid documents and any subcontractor licensed by the State who, under subcontract to the bidder, specially fabricates and installs a portion of the work or improvements described in the bid documents. Bidder shall complete the List in each instance where the amount of the subcontractor's work is in excess of one-half of one percent (.5%) of the bidder's total bid, or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent (.5%) of the total bid or ten thousand dollars (\$10,000), whichever is greater.

The apparent successful bidder will be required to establish, to the City's satisfaction, the responsibility and reliability of the subcontractors it has listed. Prior to the award of the contract, the Purchasing Officer will notify the apparent successful bidder, in writing, if City, after due investigation, has a reasonable objection to any proposed subcontractor. If, after notification of such objection, bidder is unable to address City's concern with the subcontractor, City shall give bidder the opportunity to submit an acceptable substitute. In the event bidder is unable to provide such a substitute, its bid will be deemed non-responsive.

A bidder whose bid is accepted may not substitute a different subcontractor in place of the subcontractor listed in the original bid, except with the prior written consent of the City and in accordance with the procedures set forth in Section 4107 of the Public Contract Code.

15. Bidders Interested in More Than One Bid – A bidder submitting a bid as a prime contractor may submit only one bid as a prime contractor and may not also submit one or more bids as a subcontractor to competing prime contractors. Failure to comply with this requirement will result in the rejection of all bids from the non-complying bidder. A bidder who is not submitting a bid as a prime contractor may submit any number of bids as a subcontractor to competing prime contractors.
16. Bid Price – Bid price shall include all costs for:
- a. Furnishing all tools, equipment, materials, apparatus, facilities, labor, transportation, supervision and management necessary to perform the work described in the bid documents;
  - b. Providing the necessary safety precautions for the protection of the public, such as barricades and warning signs;
  - c. Cleanup activities to restore the work site to a satisfactory condition;
  - d. Federal, state and local taxes; and
  - e. All permits and licenses required to perform the work described in the bid documents.

Any items shown in the specifications, contract drawings, or any part of the contract documents, and not specifically listed in the bid price are to be considered included; and no additional or special compensation will be allowed.

17. Submission of Bid – Bidder shall submit the completed Bid Forms and the required bid security no later than the time and date set for receiving bids as stated in the Notice Inviting Bids or any modifying Addenda. Bid shall be delivered in a sealed envelope *clearly marked with the applicable bid number* addressed to:
- City of East Palo Alto  
Office of the City Clerk  
2415 University Avenue  
East Palo Alto, CA 94303
18. Modification or Withdrawal of Bids
- a. Before Date and Time for Receipt of Bids - Bids that contain mistakes discovered by a bidder before the date and time for receipt of bids may be modified or withdrawn by written notice to City's Purchasing Officer received prior to the deadline. Any modification shall be clearly identified as such and shall be made in writing, executed and submitted in the same form and manner as the original bid.



- b. After Date and Time for Receipt of Bids - A bidder may not change its bid after the date and time set for receipt of bids except that the bidder may seek the City's consent to the substitution of a subcontractor where the bidder can demonstrate, under the provisions of state law, that the name of the substituted subcontractor was listed as the result of an inadvertent clerical error. A bidder alleging a mistake in a bid may be permitted to withdraw its bid in conformance with state law (see Public Contract Code Sections 5101, 5103 and 5105).
19. Postponement of Opening; Extensions – The City reserves the right to postpone the date and time for receipt of bids at any time prior to the date and time announced in the Notice Inviting Bids. The date and time shall be extended by at least 72 hours in the event the City issues any material changes, additions or deletions to the bid documents within 72 hours prior to the bid closing.
20. Late Bids – Bidder shall be responsible for the timely delivery of bid. Bids received after the deadline for receipt of bids shall not be accepted and shall be returned to bidder unopened unless necessary for identification purposes.
21. Public Opening of Bids – Each bid, irrespective of any defects or irregularities, that has been received by the deadline for receipt of bids, except those that have been properly withdrawn, will be publicly opened by a representative of the Purchasing Division at the date and time announced for such opening. If one or more members of the public are present, the name and address of each bidder, the total amount of each bid, and the nature and amount of the bid security furnished with each bid will be read aloud at or shortly following the deadline for receipt of bids.
22. Bid to Remain Open – The bidder shall guarantee its bid for a period of ninety (90) calendar days from the date of bid opening.
23. Bid Evaluation – City's Purchasing Officer will evaluate all bids received to determine if the bidder is responsive and responsible. A Bidder will be deemed to be responsive if it has submitted a bid that conforms in all material respects to the requirements of the bid documents and demonstrates compliance with the mandatory experience as described in Section 2. A Bidder will be deemed to be responsible if the Bidder:
- a. Has the ability, capacity, experience and skill to perform the work in accordance with the bid specifications;
  - b. Has the ability to perform the work promptly or within the time specified, without delay;
  - c. Has equipment, facilities and resources of such capacity and location to enable it to perform the work;
  - d. Has a record of satisfactory or better performance under prior contracts with the City or others; and
  - e. Has complied with laws, regulations, guidelines and orders governing prior or existing contracts.
24. Mandatory Post Bid-opening Information – In order to assist in the bid evaluation, the apparent low bidder will be required to complete and submit the form entitled "Statement of Qualifications" included in the Bid forms within two working days of notification by City that it is the apparent low bidder. Notice may be given orally, by telephone, or by facsimile sent to the number supplied by bidder. Failure to submit the Statement of Qualifications by 5:00 p.m. of the second day may result in the bid being deemed non-responsive, and the City will then determine the next apparent low bidder.
25. Discrepancies in Bid Forms – The City may waive minor defects of irregularities in any bid, provided that the discrepancy does not materially affect the bid amount or give the bidder an advantage over others. For instance, if there are unit price bid items in a bid schedule, and the amount indicated for a unit price bid item does not equal the product of the unit price and quantity listed, the unit price shall govern. Likewise, if there is more than one bid item in a bid schedule,

and the total of the schedule does not equal the sum of the bid items, the individual amounts of the bid items shall govern. If there is a difference between the bid price entered in words and the bid price entered in figures for the same quotation, the price in words shall prevail.

The City may make any investigations deemed necessary to determine if a bidder is responsive and responsible.

26. Rejection of Bids – The City reserves the right to reject any and all bids; and further reserves the right to reject any bids that are found to be non-responsive or submitted by a bidder that is not responsible.
27. Tie Bids – In the event that an identical price is received from two or more responsive and responsible bidders, the City may re-advertise for bids or the successful bidder may be determined by the casting of lots with the tie bidders in public at a date and time set by City's Purchasing Officer.
28. East Palo Alto Business License – The successful bidder must either possess a current, valid East Palo Alto business license or must have submitted a East Palo Alto business license application and fee at the time of contract execution.
29. Contract Award – Contract award will be made to the lowest responsive and responsible bidder. In the event that bids are required on a Base Bid and Additive Alternates, contract award will be based solely on the Base Bid. The acceptance of a bid will be evidenced by a written Notice of Award delivered to the successful bidder.
30. Bid Protest – The City will issue a Notice of Intent to Award prior to the actual award. Any Bid protest must be submitted in writing to the Purchasing Division, City Hall Annex, 2415 University Avenue, East Palo Alto, California 94303, before 5:00 p.m. of the fifth (5th) calendar day following posting of a Notice of Intent to Award for Construction in the Lobby of the City Hall Annex. City will use reasonable efforts to deliver by electronic means a copy of the Notice of Intent to Award to all Bidders who submitted Bids and provided an email address or other forms of electronic communication no later than the working day after issuance, although any delay or failure to do so will not extend the Bid protest deadline described above. The following conditions will apply to all protests.
  - a. The initial protest document must contain a complete statement of the basis for the protest;
  - b. The protest must refer to the specific portion of the document that forms the basis for the protest;
  - c. The protest must include the name, address and telephone number of the person representing the protesting party. If a fax number is available, it should also be included;
  - d. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

The procedure and time limits set forth in this paragraph are mandatory and are Bidder's sole and exclusive remedy in the event of Bid protest. Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings. A Bidder may not rely on a protest submitted by another Bidder, but must timely pursue its own protest.

31. Post-Notice of Award Requirements

- a. Within ten (10) calendar days of Notice of Award, the successful bidder shall submit to the person identified on the cover of this bid invitation the following:
  1. The General Construction Contract executed in duplicate by the successful bidder;
  2. Performance and Payment Bonds;
  3. Guaranty
  3. Evidence of the required insurance coverage;
  4. A East Palo Alto business license tax and fee if bidder does not already possess such license; and
  5. A completed Internal Revenue Service Form W-9.
- b. Successful Bidder's failure to submit the documents required herein, in a proper and timely manner, entitles City to rescind its award, and to cause Bidder's Bid Security to be forfeited as provided in paragraph 32.
- c. City may elect in its sole discretion to extend the time to receive any of the documents listed herein.

32. Failure to Execute and Deliver Documents – If Bidder to whom Notice of Award is issued shall, for 10 days after such award, fail or neglect to execute and deliver all required contract documents, bonds, insurance certificates and other documents, City may, in its sole discretion, deposit Bidder's surety bond, cashier's check or certified check for collection, and retain the proceeds thereof as liquidated damages for Bidder's failure to perform. Bidder agrees that calculating the damages City may suffer as a result of Bidder's failure to execute and deliver all documents would be extremely difficult and impractical, and that the amount of Bidder's required Bid security shall be the agreed and presumed amount of City's damages. City may then turn to the next Apparent Low Bidder and proceed as if this Apparent Low Bidder were the original Apparent Low Bidder.

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**III. BID FORMS**

**Slope Repair at San Francisquito Creek**

Project No. SP-15

Bid To: City of East Palo Alto, City Clerks Office  
2415 University Avenue  
East Palo Alto, CA 94303

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the City in the form included in the Contract Documents to perform the Work as specified or indicated in these Contract Documents entitled: Slope Repair at San Francisquito Creek, Project SP-15.

Bidder accepts all the terms and conditions of the Contract Documents, including without limitation those in the Notice Inviting Bids and Instructions to Bidders, dealing with the disposition of the Bid Security. Attached hereto is a cashier's check, certified check or bid bond in the amount of \$\_\_\_\_\_ as required in the Notice Inviting Bids.

This bid will remain open for the period stated in the Instructions to Bidders. Bidder will enter into an Agreement within the time and in the manner required in the Information to Bidders, and will furnish the insurance certificates, Payment Bond, Performance Bond, and Permits required by the Contract Documents.

Bidder has examined copies of all the Contract Documents including the following Addenda (receipt of which is hereby acknowledged):

Number _____	Number _____
Number _____	Number _____
Number _____	Number _____

Bidder has familiarized itself with the nature and extent of the Contract Documents, the Work, the site, the locality where the Work is to be performed, the legal requirements (federal, state, and local laws, ordinances, rules, and regulations), and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as Bidder deems necessary.

In conformance with current statutory requirements of California Labor Code Section 1860, et seq., the undersigned confirm the following as its certification:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions before commencing the performance of the work of this contract.

Bidder agrees to complete the Work required under the Contract Documents (including all Bid Schedules, Subcontractor List, Bidder's General Information, and Non-Collusion Affidavit contained in these Bid Forms) within the Contract Time specified, and to accept in full payment the Contract Price based on the Lump Sum or Unit Bid Price(s) listed in the Bid Schedule(s).

Dated: \_\_\_\_\_ Bidder: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

## BID SCHEDULE

This Bid Schedule must be completed and included with the sealed Bid Proposal. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead.

### BASE BID

Item Number	Item Description	Qty	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS		
2	Site Preparation	1	LS		
3	Turf Reinforcement mat	4,500	SF		
<b>TOTAL</b>					

TOTAL BASE BID IN WORDS: \_\_\_\_\_

**SUBCONTRACTOR LIST**  
(Public Contract Code 4100 et seq.)

Name of Subcontractor	Address of Subcontractor and License Number <small>(PWC Registration Numbers shall be included in Part E under the 'Statement of Qualifications')</small>	Work to Be Performed	Value of Work to Be Performed by Subcontractor (\$)
1.	(License No.).....		
2.	(License No.).....		
3.	(License No.).....		
4.	(License No.).....		
5.	(License No.).....		

*Bidder:* \_\_\_\_\_

*By:* (signature or initials) \_\_\_\_\_

### BIDDER'S INFORMATION

The Bidder shall furnish the following information. Additional sheets shall be attached as required.

1. BIDDER'S name and street address:

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

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

\_\_\_\_\_

2. BIDDER'S telephone No.: ( ) \_\_\_\_\_ Fax No.: ( ) \_\_\_\_\_

BIDDER's E-mail Address: \_\_\_\_\_

3. BIDDER'S East Palo Alto Business License No.: \_\_\_\_\_ BIDDER'S Tax ID No.: \_\_\_\_\_

4. TYPE OF BUSINESS

If you are an individual or partnership, so state. If you are a partnership, list the names of all general partners composing the partnership. If a corporation, list the names of president, secretary, treasurer, and manager.

Individual \_\_\_\_\_ Name(s): \_\_\_\_\_

Partnership \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Corporation \_\_\_\_\_ Names of Corporate Officers

State of Incorporation \_\_\_\_\_ President \_\_\_\_\_

Secretary \_\_\_\_\_

Treasurer \_\_\_\_\_

Manager \_\_\_\_\_

Joint Venture \_\_\_\_\_

Other \_\_\_\_\_

(Describe)

5. CONTRACTOR'S license: Primary Classification \_\_\_\_\_



State License No.: \_\_\_\_\_ Expiration Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Supplemental license classifications: \_\_\_\_\_

6. NAME of person who inspected the site of the proposed Work for the Bidder:

Name: \_\_\_\_\_ Date of inspection: \_\_\_\_\_

7. BIDDER'S EXPERIENCE

- 1. Bidder has been doing business under its present name for \_\_\_\_\_ years.
- 2. Bidder has experience in work comparable in type and complexity with that required under the proposed contract for \_\_\_\_\_ years as a General Contractor.

Bidder shall sign under penalty of perjury that all the information provided in this information sheet is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

### STATEMENT OF QUALIFICATIONS

Apparent low bidder shall complete this entire Statement of Qualifications questionnaire and submit it to City upon notification, in accordance with paragraph 23, Instruction to Bidders. Failure to complete the questionnaire or inclusion of any false statement is grounds for immediate disqualification. The City reserves the right to waive minor irregularities, inconsequential deviations and to make all final determinations. The City will evaluate the information contained in each applicant's questionnaire and responses received in reference checks. The sole and discretionary judgment of the City will determine if the Contractor is deemed qualified.

### CONTACT INFORMATION

Company Name: \_\_\_\_\_

Form of Company: \_\_\_\_\_ Sole Proprietor \_\_\_\_\_ Partnership \_\_\_\_\_ Non-Profit 501 C3  
\_\_\_\_\_ Corporation \_\_\_\_\_ other (please attach explanation)

Owner of Company: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

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

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

Federal Tax I.D. No. \_\_\_\_\_

### PART A: GENERAL INFORMATION

Complete Part A before proceeding to Part B.

- 1. Contractor possesses a valid and current California Contractor's "C39" license for the work proposed. Yes \_\_\_ No \_\_\_
- 2. Contractor has a minimum of \$1,000,000.00 liability insurance coverage. Yes \_\_\_ No \_\_\_
- 3. Contractor's license has been revoked at any time in the last five (5) years. Yes \_\_\_ No \_\_\_

- 4. Contractor has been “default terminated” by an owner (not for convenience), or a Surety has completed a contract for Contractor within the last five (5) years. Yes \_\_\_ No \_\_\_
- 5. Contractor has been cited more than twice for failure to pay prevailing wages in the last five (5) years. Yes \_\_\_ No \_\_\_

Contractor will be immediately disqualified if any answer to questions 1 or 2 is No.  
 Contractor will be immediately disqualified if any answer to question 3 is Yes.  
 Contractor may be immediately disqualified if the answer to questions 4 or 5 is Yes. At a minimum to avoid such disqualification, Contractor must include with this Questionnaire a full description of the applicable circumstance and sufficient information to permit City to evaluate Contractor’s overall qualifications to perform the work. City retains sole discretion to disqualify any Contractor who answers yes to either question 4 or 5.

**PART B: SAFETY, PREVAILING WAGE, DISPUTES AND BONDS**

SAFETY

- 1. Has CAL OSHA, Federal OSHA, the EPA or any Air Quality Management District cited your firm in the past five (5) years? Yes\_\_\_\_\_ No\_\_\_\_\_ If yes, attach description of each citation.
- 2. How often do you require documented safety meetings be held for:
 

Field Supervisor	Weekly _____	Bi-weekly _____	Monthly _____	Less than monthly _____
Employees	Weekly _____	Bi-weekly _____	Monthly _____	Less than monthly _____
New Hires	Weekly _____	Bi-weekly _____	Monthly _____	Less than monthly _____
Subcontractors	Weekly _____	Bi-weekly _____	Monthly _____	Less than monthly _____
- 3. How often do you conduct documented safety inspections?
 

Quarterly _____	Semi-annually _____	Annually _____
-----------------	---------------------	----------------
- 4. Do you have home office safety representatives who visit/audit the job site?
 

Quarterly _____	Semi-annually _____	Annually _____
-----------------	---------------------	----------------

PREVAILING WAGE PROVISIONS

- 5. Has your firm been fined, penalized or otherwise found to have violated any prevailing wage or labor code provision? If yes, attach description of each fine/penalty. Yes\_\_\_\_\_ No\_\_\_\_\_

(License Provisions)

6. Has your company changed names or license numbers in the past 10 years? If so, please state reason for change. Yes \_\_\_\_\_ No \_\_\_\_\_ Reason \_\_\_\_\_

(Disputes)

7. Has your firm had any claims, litigation, or disputes ending in mediation or arbitration, or termination for cause associated with any project in the past five (5) years? If yes, attach description of each such instance including details of total claim amount, settlement amount, and owner's name and phone number.

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

**PART C: EXPERIENCE**

The unique nature of this project requires prior similar project experience of the firm. Summarize your similar project experience below and provide the detailed project information requested:

General Contractor - List at least three (3) projects of similar size and scope with a construction cost not less than \$400,000 completed in the past (5) years.

Project name	Const. Cost (\$)	Date completed (year)	Name, address and telephone number of owners representative

**Most Recently Completed Project.**

In order to be considered responsive, Contractor must provide information about its most recently completed project. Names and references must be current and verifiable. If a separate sheet is used, it must contain all of the following information:

- Project Name: \_\_\_\_\_  
 Location: \_\_\_\_\_  
 Owner: \_\_\_\_\_  
 Owner Contact (name and phone number): \_\_\_\_\_  
 Architect: \_\_\_\_\_  
 Architect Contact (name and phone number): \_\_\_\_\_  
 Const. Mgr. or Project Mgr. (name and phone number): \_\_\_\_\_  
 Description of Project, Scope of Work Performed: \_\_\_\_\_

Value of Construction Contract: \_\_\_\_\_  
 Value of Change Orders: \_\_\_\_\_  
 Original Scheduled Date of Completion: \_\_\_\_\_  
 Time Extensions Granted (number of days): \_\_\_\_\_  
 Actual Date of Completion: \_\_\_\_\_  
 Number of Stop Notices filed by subcontractors or suppliers: \_\_\_\_\_

**PART D: FINANCIAL AND OTHER INFORMATION**

1. Has your firm ever reorganized under the protection of the bankruptcy laws? Yes \_\_\_\_ No \_\_\_\_
2. Have you ever had insurance terminated by a carrier? Yes \_\_\_\_ No \_\_\_\_  
 If yes, explain on separate signed sheet.

Contractor shall sign under penalty of perjury that all the information provided in this questionnaire is true and correct. Contractor's signature authorizes the City and its agents and representatives, to obtain a credit report and/or verify any of the above information

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Title

**PART E: CONTRACTOR REGISTRATION WITH STATE OF CALIFORNIA**

Please list your Public Works Contractor (PWC) Registration number(s) and Email Addresses:

		Name	PWC Registration Number	Email Address (Please Print)
1.	General Contractor			
2.	Subcontractors			

**NON-COLLUSION AFFIDAVIT**

State of California )  
 )  
County of \_\_\_\_\_)

I, \_\_\_\_\_, being first duly sworn, deposes and says that he or she is \_\_\_\_\_ of \_\_\_\_\_ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, an undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; and 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.

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

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

Title: \_\_\_\_\_

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

Seal and Notary Acknowledgement  
subscribed and sworn to me this

\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_

**ATTACHMENT A**  
**GENERAL CONSTRUCTION CONTRACT**

## CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

This Contractor and Professional Services Agreement ("Agreement") is made by and between the City of East Palo Alto, a municipal corporation ("City"), as authorized by the East Palo Alto City Council via Resolution No. [REDACTED], and [ type in name ], [ type in the type of entity ], hereinafter referred to as "Contractor", who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City professional services as specified in Exhibit A, entitled "Scope of Work."
- 2. Payment.** City shall pay Contractor for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Agreement.
- 3. Term.** The term of this Agreement shall commence on [ type in start date ] and shall continue in full force and effect until [ type in end date ].
- 4. Facilities and Equipment.** Contractor shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
- 5. Indemnification.** Contractor shall indemnify, defend (with independent counsel approved by the City), and hold harmless the City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, Contractor's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Contractor's operations, or any subcontractor's operations, to be performed under this Agreement, for the fullest extent permitted by law, with the exception of the sole active negligence or willful misconduct of the City. The provisions of this section shall survive the expiration or termination of this Agreement and are not limited by any provisions relating to insurance in this Agreement.
- 6. Insurance Requirements.** Contractor agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements for Contractor." Failure to maintain required insurance at all times shall constitute a default and material breach.



**7. Accident Reports.** Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the City any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

**8. Conflict of Interest.** Contractor warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Contractor's family, business, real property or financial interests and the services to be provided under this Agreement. Contractor shall comply with the City of East Palo Alto Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Contractor's family, business, real property or financial interests occurs during the term of this Agreement that creates an actual or potential conflict of interest, then Contractor shall disclose such conflict in writing to City.

**9. Independent Contractor.** Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, employees, agents or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Contractor accomplishes services pursuant to this Agreement.

**10. Licenses, Permits, Etc.** Contractor represents and warrants to City that all Contractor services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Agreement and that Contractor has all the permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice its profession.

**11. Business License.** Contractor, and its subcontractors, has obtained or agrees to apply prior to performing any services under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Contractor until

such business license(s) has been obtained.

**12. Standard of Performance.** Contractor shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Contractor's profession currently practicing in California.

Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred or, beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Contractor is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor.

Contractor's responsibilities under this section shall not be delegated. Contractor shall be responsible to City for acts, errors, or omissions of Contractor's subcontractors.

**13. Force Majeure.** Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause by circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slow down or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts. In the event that the Contractor is unable to meet the completion date or schedule of services, Contractor shall inform the City Representative of the additional time required to perform the work and the City Representative may adjust the schedule.

**14. Time is of the Essence.** Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

**15. Personnel.** Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

**16. Prevailing Wages for Public Works Projects.** For public works projects, Contractor shall comply with all provisions of California laws dealing with prevailing wages, apprentices, and hours of work. Contractor shall also comply with provisions of Labor Code section 1720 as applicable. Contractor shall maintain certified payroll records evidencing such payment of prevailing wages as required by law.

**17. Contractor Not Agent.** Except as authorized under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Contractor shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, under this Agreement, to bind City to any obligation whatsoever.

**18. Termination or Abandonment by City.** The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving notice to Contractor. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Contractor for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Contractor for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and

reimbursement of authorized expenses, payable pursuant to this section.

**19. Products of Consulting Services.** The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Contractor resulting from services rendered pursuant to this Agreement, shall become the property of City. Contractor agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

**20. Cooperation by City.** City shall, to the extent reasonable and practicable, assist and cooperate with Contractor in the performance of Contractor's services hereunder.

**21. Assignment and Subcontracting.** Contractor shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Contractor shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Contractor. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Contractor to use subcontractors for performance of any service under this Agreement.

The City is an intended beneficiary of any work performed by Contractor's subcontractor for purposes of establishing a duty of care between the subcontractor and City.

**22. Successors and Assigns.** All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

**23. Non-Discrimination/Fair Employment Practices.** Contractor shall comply with all applicable federal, state and local laws, rules and regulations in

regard to non-discrimination and non-harassment in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, sexual orientation, medical condition or physical handicap. Contractor agrees to abide by the City's Policy Against Discrimination, Harassment and Retaliation as set out in attached Exhibit D.

**24. Official Notices.** All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City: [insert name]  
City Manager  
City Manager's Office  
2415 University Avenue  
East Palo Alto, CA 94303

If to Contractor: [insert name]  
[insert title]  
[insert company name]  
[insert street name and suite #, if any]  
[insert city, state and zip code]

Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section. Routine administrative communications shall be made pursuant to section 1 of Exhibit A.

**25. Integration Clause.** This Agreement, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

**26. Severability Clause.** Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

**27. Law Governing.** This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of San Mateo County in the State of California or in the United States District Court, Northern District of California, San Francisco/Oakland Division, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of

process issued by such courts.

**28. Waiver.** Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

**29. Ambiguity.** The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

**30. Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**31. Compliance with Laws.** Contractor will comply with all statutes, regulations and ordinances in the performance of all services under this Agreement.

**32. Confidentiality.** Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this Agreement as confidential and shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City records or information to any third party, other than its own employees, agents or subcontractors who have a need for the City records or information for the performance of services under this Agreement. A violation by Contractor of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

Contractor agrees and acknowledges that this confidentiality provision does not limit the City's disclosure as required by law, pursuant to a subpoena, the California Public Records Act, or Order of the Court.

**33. News and Information Release.** Contractor agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

**34. Counterparts.** The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

**35. Authority.** The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on

behalf of Contractor.

**36. Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A, entitled "Scope of Work," including any attachments.

Exhibit B, entitled "Compensation," including any attachments.

Exhibit C, entitled "Insurance Requirements," including any attachments.

Exhibit D, entitled "Policy Against Discrimination, Harassment and Retaliation"

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

[ INSERT CONTRACTOR NAME ] CITY OF EAST PALO ALTO,  
a municipal corporation

[ INSERT TYPE OF ENTITY ]

By: \_\_\_\_\_  
[ insert name ]  
[ insert title ]

By: \_\_\_\_\_  
Melvin E. Gaines  
City Manager

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
East Palo Alto Business License No.

APPROVED AS TO CONTENT:

[ Insert Department Head Name ]  
[ Insert Department Head Title ]

APPROVED AS TO FORM:

\_\_\_\_\_  
John D. Lê  
City Attorney

**EXHIBIT A**  
**SCOPE OF WORK**

**1. Representatives.**

City Representative:

[ insert name ]  
[ insert title ]  
[ insert Department name ]  
2415 University Avenue  
East Palo Alto CA 94303  
[ insert telephone number ]  
[ insert facsimile number ]

Contractor's Representative:

[ insert name ]  
[ insert title ]  
[ insert company name ]  
[ insert street name and suite #, if any ]  
[ insert City, state and zip code ]  
[ insert telephone number ]  
[ insert facsimile number ]

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Contractor Representative and City's Representative.

**2. Services and Schedule.**

The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference and performed according to the schedule set forth therein. Contractor will complete all services by [ insert date ].

**3. Phased Performance.**

If the schedule calls for the services to be performed in phases or discrete increments, Contractor shall not proceed from one phase or increment to the next without written authorization from the City's Representative.

**4. Additional Services.** Additional services are those services related to the scope of Services of Contractor as set forth in Exhibit A but not anticipated at the time of execution of this Agreement ("Additional Services"). Additional Services shall be provided only when authorized by an amendment to this Agreement and approved by the City Manager, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Contractors to perform said Additional Services. Any costs incurred due to the performance of Additional Services prior to the execution of an amendment will not be reimbursed



under this Agreement or an amendment.

Contractor's compensation for Additional Services shall be based on the total number of hours spent on Additional Services multiplied by the employees' appropriate billable hourly rate as established below. City, at its option, may negotiate a fixed fee for some or all Additional Services as the need arises. Where a fixed fee for Additional Services is established by mutual agreement between City and Contractor, compensation to Contractor shall not exceed the fixed fee amount.

**5. Key Personnel.** All of the individuals identified below are necessary for the successful prosecution of the services due to their unique expertise and depth and breadth of experience. There shall be no change in the personnel listed below, without written approval of the City Representative. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Agreement and shall be grounds for termination.

Key personnel: [ **INSERT LIST OF EMPLOYEES NAMES** – If the project does not require assignment of specific personnel, delete "Key Personnel" section ]

**EXHIBIT B**  
**COMPENSATION**

**1. Contractor's Compensation.**

A. City agrees to pay Contractor, at the rate(s) specified below, for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, for a total not to exceed [ insert dollar amount in words - e.g. Two Thousand Five Hundred Fifty Dollars and 13 Cents ] [ insert dollar amount in number- e.g., \$2,550.13 ].

Contractor shall notify City in writing no later than thirty (30) days prior to the estimated date when Contractor will have billed City the maximum payment amount permitted under this Agreement, and Contractor shall provide City with an estimate of the additional compensation required to complete the project.

**2. Appropriate Billable Hourly Rates for Services and Additional Services.**

Contractor's billable hourly rates shall be:

[ Insert Name, Title and Hourly Rate ]

or

["Contractor will perform the services according to the schedule contained in Attachment [insert number] of [insert letter]."]

**3. Contractor's Reimbursable Expenses.**

Reimbursable Expenses shall be limited to actual reasonable expenditures of Contractor for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

#### **4. Payments to Contractor.**

A. Payments to Contractor shall be made within a reasonable time after receipt of Contractor's invoice, said payments to be made in proportion to services performed. Contractor may request payment on a monthly basis. Contractor shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Contractor shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number
4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice (Itemize all Reimbursable Expenses")
7. Total Billed to Date

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to Contractor for correction. City shall not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above.

#### **5. Accounting Records of Contractor.**

Contractor shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Contractor's direct salary costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices. Contractor shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty four (24) hours notice.

The obligations of Contractor under this section shall survive this Agreement.

#### **6. Taxes.**

Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request. Contractor hereby agrees to indemnify and defend City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this section pursuant to the Indemnification provisions of this Agreement.

7. **Taxpayer Identification Number.** Contractor shall provide City with an IRS Form W-9, Request for Taxpayer Identification Number and Certification, containing an original signature and any other State or local tax identification number requested by City.

## EXHIBIT C

### INSURANCE REQUIREMENTS

#### I. TYPES OF INSURANCE

- A. Commercial General Liability Insurance: Contractor's General Liability insurance shall include contractual liability coverage. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the Contractor's operations under this Agreement, whether such operations be by Contractor or by any sub-Contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000), in aggregate or Three Million Dollars (\$3,000,000) combined single limit bodily injury and property damage for each occurrence.
- B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
- C. Worker's Compensation and Employer's Liability Insurance: Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement".
- D. Professional Liability Insurance: Contractor shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of Contractor pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

## II. ADDITIONAL REQUIREMENTS

- A. Broader Insurance Coverage: In the event that Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance shall be called upon to protect it as a named insured.
- B. Additional Insured Status: The City of East Palo Alto, its subsidiary agencies, directors, officers, employees, agents, independent contractors and volunteers shall be named as additional insureds on any such policies of comprehensive general and automobile liability insurance.
- C. Primary and Non-Contributory Coverage: Except for professional liability and worker's compensation insurance, the policies shall also contain a provision that the insurance afforded to the City, its subsidiary agencies, and their directors, officers, employees, agents, independent contractors and volunteers based on additional insured status shall be primary and non-contributory insurance to the full limits of liability of the policy, and that if the City, its subsidiary agencies and their directors, officers, employees, agents, independent contractors and volunteers have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause).
- E. Notice of Cancellation: Contractor shall provide thirty (30) days' notice, in writing, to the City, at 2415 University Avenue, East Palo Alto, CA 94303, of any pending change or cancellation of the policy.
- F. Deductibles or Self-Insured Retentions: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by City.
- G. Breach: In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

## EXHIBIT D

### CITY OF EAST PALO ALTO'S POLICY AGAINST DISCRIMINATION, HARASSMENT AND RETALIATION

EFFECTIVE DATE: 12/21/2004

REVISED DATE: 1/12/07

ADOPTED BY CITY COUNCIL: 12/21/2004

#### I. PURPOSES

The purposes of this policy are to emphasize the City's commitment to keeping its workplace free of harassment, discrimination and retaliation, to define and provide examples of the conduct that is prohibited, to summarize the respective responsibilities for preventing, reporting, investigating, and responding to violations and to give clear warning of the serious consequences that violators will face.

A copy of this policy shall be provided to all persons who are subject to it, and shall be posted on City bulletin boards in all City facilities.

#### II. POLICY

All of the following are prohibited by this Policy:

- Discrimination or harassment in any aspect of City employment based on any legally protected characteristic or status, including sex, gender, sexual orientation, race, color, national origin, language, ancestry, religion, age, marital status, domestic partner, physical disability, mental disability, or medical condition.
- Retaliation for opposing, filing a complaint about, or participating in an investigation of, any such harassment or discrimination.
- Aiding, abetting, inciting, compelling, or coercing or any such discrimination, harassment or retaliation, or attempting to do so.

The City will take all reasonable steps necessary to prevent such misconduct from occurring, and to remedy and punish any occurrence. Any City employee, Council member, member of any advisory body, including any Commissioner, Committee member, or Board member found having engaged in any such misconduct will be subject to disciplinary action up to and including termination or censure or removal and will be deemed to have acted outside the course and scope of his or her employment.

This policy applies to all City employees, volunteers, interns, vendors, and contractors as well as to all applicants for City positions.

The policy shall not be interpreted or applied in any manner that would be inconsistent with any applicable State or Federal law or regulation, or increase the legal liability of the City.

### **III. DESCRIPTION AND EXAMPLES OF PROHIBITED HARASSMENT**

Harassment on the basis of sex is unlawful, and is prohibited by this policy. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- An individual's submission to such conduct is made explicitly or implicitly, a term or condition of that individual's employment; or,
- An individual's submission to or rejection of such conducts is used as the basis for an employment decision affecting that individual; or,
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

Sexual harassment need not be motivated by sexual desire or gratification, and may include nonsexual conduct motivated by the violator's hostility towards the victim's gender, or towards the victim's nonconformity to gender stereotypes. Sexual harassment includes not only conduct motivated by gender, but also by pregnancy, childbirth, or a related condition. A harasser may be either male or female, and the victim may either be the same sex or the opposite sex. Even a person who is not the intended target of harassment may be harassed by it if he or she witnesses it.

Sexual harassment may be verbal, visual, or physical. For example:

- Verbal harassment may consist of derogatory, threatening, or intimidating comments, epithets, slurs or jokes; references to gender, physical appearance, attire, sexual prowess, marital status, or pregnancy; or sexual advances, propositions, or demands.
- Visual harassment may consist of displaying or circulating derogatory or offensive posters, cartoons, drawings, photographs, pin-ups, computer images, or electronic media transmissions.
- Physical harassment may consist of assault, battery, or unwelcome, unnecessary and offensive touching (kissing, hugging, patting, rubbing, pinching, brushing against), stating, leering, gesturing, whistling or making noises, impeding or blocking movement, or physical interfering with normal work or movement.



In addition to prohibiting harassment based on sex or gender, this policy also prohibits harassment based on sexual orientation, or upon any other legal protected characteristic or status, such as race, religion, creed, color, national origin, language, ancestry, physical disability, mental disability, medical condition, marital status, domestic partner, or age.

Harassment on the basis of such factors is subject to the principles applicable to sexual harassment, as stated above.

#### **IV. REPORTING DISCRIMINATION, HARASSMENT OR RETALIATION**

Any City employee, volunteer, intern, vendor, contractor, or applicant who becomes aware of any discrimination, harassment or retaliation prohibited by this policy shall report it immediately to their immediate supervisor, or higher ranking supervisor, or the Assistant City Manager. Under no circumstances shall such a report be required or expected to be made to the person who engaged in the misconduct that is subject to this report.

The responsibility to report conduct prohibited by this policy arises even if the conduct is directed toward someone else and even if the person toward whom it is directed does not want it reported.

Reports may be made orally or in writing, free of requirements as to form.

Because reports of conduct prohibited by this policy will be treated as serious charges, the making of a deliberately false report, or a report made with reckless disregard for its truth or falsity, may subject the maker to disciplinary action.

#### **V. INVESTIGATION AND RESOLUTION**

The City of East Palo Alto will investigate all reported violations of this policy. All employees, volunteers, interns, vendors and contractors, members of the City Council, or members of a City advisory body shall cooperate with any such investigation.

Any supervisor, manager department head, member of the City Council, or member of a City advisory body who receives a report of, or who becomes aware of, conduct prohibited by this policy shall promptly report it to the Personnel Officer. Upon receiving the report, the Personnel Officer shall direct any report that accuses a City Council member or appointee to the City Council for investigation and resolution. The City Council shall delegate the responsibility to conduct a prompt, full, and fair investigation to the qualified private investigator. Upon receiving a report regarding a non-City Council member or appointee, the Personnel Officer shall conduct a prompt, full, and fair investigation, or delegate

that responsibility to a qualified City employee or private investigator. The person performing the investigation shall:

- Interview the complainant, the accused, and any other person the investigator believe to have knowledge relevant to the charges;
- Gather and review any documentary, electronic, or physical evidence relevant to the charges;
- Consult with legal counsel as needed;
- Determine whether the charges can or cannot be substantiated; and
- Develop recommendations for appropriate remedial and/or disciplinary action, if any.

## **VI. OUTSIDE ADMINISTRATIVE AGENCIES**

In addition to the remedies described in this Policy, the U.S. Equal Employment Commission and the California Department of Fair Employment and Housing provide administrative complaint and investigation processes as to harassment, discrimination or retaliation on the basis of a protected status. The toll free telephone number for such office is listed below:

California Department of Fair Employment and Housing 1.800.233.3212  
U.S. Equal Employment Opportunity Commission 1.800.669.4000

# **ATTACHMENT B**

## **GENERAL PROVISIONS**

# GENERAL PROVISIONS

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## SECTION 1 – TERMS AND DEFINITIONS

### **1.01 Terms**

Unless otherwise stated, the words directed, required, permitted, ordered, instructed, designated, considered necessary, prescribed, approved, acceptable, satisfactory, or words of like meaning, refer to actions, expressions, and prerogatives of the Engineer.

### **1.02 Definitions**

Except as amended or supplemented, whenever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows:

ASTM – American Society for Testing and Materials specifications.

AWWA – American Water Works Association and its Standard Specifications.

Addenda – Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the Contract Documents.

Bid – The offer or proposal of the bidder submitted on the prescribed forms setting forth the prices for the work to be performed.

Bid Forms – Includes the Bid Schedule, Designation of Subcontractors, Bidders Statement of Responsibility, Bidder's Non-Collusion Affidavit, Bid Security, and all other information requested by the Bid Proposal Documents.

Bidder – Any individual, firm, partnership, corporation, or other legal entity submitting a bid for the work, acting directly or through a duly authorized representative. After the City awards the Contract, the term "Bidder" shall be equivalent to the term "Contractor" for the purpose of identifying the Contractor's rights and obligations under the Contract Documents.

Bidding Documents – The Notice Inviting Bids, Instruction to Bidders, Bid Proposal forms and Bidders Bond.

Bonds – Bid, performance, labor and material, and warrantee bonds and other instruments of security.

Calendar Day – A 24-hour period beginning at 12:00 AM and ending at 11:59 PM.

Change Order – A document recommended by the Engineer which is signed by the Contractor and City authorizing an addition, deletion or revision in the work, with possible adjustment in the contract price or the contract time, issued on or after the effective date of the Agreement.

City – City of East Palo Alto, California, as City,; a political subdivision of the State of California, acting through the City Council as the Governing Body or duly authorized agents.

City's Representative – The Director of Public Works or the Director's authorized representative, acting on behalf of the City, designated by the City to act as its agent on specified matters relating to this contract.

City Regulations – All written laws, rules, and policies established by the City, including those set forth in the General Plan, East Palo Alto Municipal Code, ordinances, resolutions, policies, procedures, and City Design Documents (including the Standard Plan, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).

Code – The terms Government Code, Labor Code, etc, refer to codes of the State of California.



Completion – The point at which work has been completed in accordance with the contract plans and specifications to the satisfaction of the Engineer and there are no items of work remaining to be completed. See General Provisions, Section 7.19, “Project Completion and Closeout”.

Consulting Engineer/Architect – One of several consulting firms or their designated representatives having a contractual relationship with the City to perform certain duties.

Contract – The entire written agreement covering the performance of the work as more fully described in Section 3.05: “Contract Documents and Precedence”.

Contract Time – Number of days, calendar or working, stated in the contract as the duration for the completion of the various parts of the Work (defined as Milestones) and the whole of the Work.

Contract Unit Price – The Contractor’s original bid for a single unit of an item of work in the bid.

Contractor – An individual, partnership, corporation or other legal entity entering into a contract with the City to perform the work. After the City awards the Contract, the term “Contractor” shall be equivalent to the term “Bidder” for the purpose of identifying the Contractor’s rights and obligations under the Contract Documents.

Council – The City Council of the City of East Palo Alto.

Days – Days shall mean calendar days unless otherwise specified.

Defective Work – Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of the Engineer, or requirements of any inspection, reference standard, test, or approval specified in the Contract Documents, or has been damaged prior to the Engineer’s recommendation of final acceptance.

Directive – Any written instruction to the Contractor pertaining to the completion of a project objective including, but not limited to Field Orders, responses to Requests for Information, Clarifications and the Notice to Proceed.

Engineer – The City Engineer or his/her designee.

Final Acceptance – Determination by the Director of Public Works that the entire contract has been completed in all respects in accordance with the Contract Documents and any modifications previously approved, evidenced by a Certificate of Final Acceptance signed by the Director of Public Works.

Float – The number of days between early and late completion. The float will be assigned to the project and will be available to both the City and the Contractor as needed to complete the work in accordance with the agreement.

Greenbook – The Standard Specifications promulgated by Public Works Standards, Inc., entitled “Standard Specifications for Public Works Construction” (SSPWC), and current editions.

Laboratory – The laboratory approved by the Engineer to test materials and work involved in the contract.

Liquidated Damages – The amount prescribed in the contract documents to be paid to the City or to be deducted from any payments due or to become due to the Contractor for each contract day’s delay in completing the whole of the Work and/or any of the Milestones.

Losses – Any and all losses, costs, liabilities, claims, damages, and expenses, including reasonable attorneys’ fees and expenses.

Milestone – An event specified in the Contract Documents relating to an intermediate completion date or time prior to completion of all the work.

Notice of Intent to Award – Indicates the intent of the City to present a contract to Council for award at the council meeting indicated.

Notice to Proceed – A written notice by the City to the Contractor authorizing the start of work and fixing the date on which the contract time will start.

Owner – The City of East Palo Alto.

Plans – The contract drawings approved by the Engineer which show the location, character, dimensions and details of the work.

Project – The work performed under the Contract Documents.

Punchlist – A list generated by the City or the City's Representative of any work to be completed or corrected by the Contractor before the contract work will be recommended for acceptance by the Director of Public Works.

Record Documents - Contract drawings, Contractor shop drawings, and equipment manuals revised by the Contractor to reflect actual installation where it deviates from the original document, or to show features constructed or found that do not show on the original document.

Reference Specifications – Those standards, rules, method of tests or analysis, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents. These refer to the current edition or amendments in effect at the time of advertising the project unless specifically referred to by edition, volume or date.

Revocable Bid Items – Bid items noted as "revocable items" may be deleted entirely or in part from the Work at the option of the City. The provisions in Section 4.07(b) and 4.07(c), "Unit Price Adjustments", shall not apply to such deletion, and no compensation will be allowed the Contractor by reason of such deletion.

Shop Drawings – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the work.

Special Provisions – Any provisions which supplement or modify these General Provisions.

Specifications – General Provisions, Special Provisions, Technical Specifications and Standard Specifications incorporated by reference.

Standard Details – The City of East Palo Alto Standard Details for Public Works Construction, 2006 Edition and subsequent updates.

Standard Specifications – The City of East Palo Alto Standard Specifications for Public Works Construction, current edition.

State – State of California.

State Standard Plans – The Standard Plans of the Department of Transportation of the State of California (Caltrans), entitled "Standard Plans", current edition.

State Standard Specifications – The Standard Specifications of the Department of Transportation of the State of California (Caltrans), entitled "Standard Specifications", current edition. **Also, Revised Standard Specifications.**

Subcontractor – Any individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the work at the site.

Submittal – Any document or material required to be submitted to the City for the City's review or information.

Substantial Completion – When the work (or a specified part thereof) has progressed to the point where it is sufficiently complete and in accordance with the Contract Documents.

Surety – Any individual, firm or corporation, bound with and for the Contractor for the acceptable performance and completion of the work, and the satisfaction of all obligations incurred.

Surveyor – A land surveyor licensed in the State of California.

Work – The construction services required by the Contract Documents.

Working Day – Any day except Saturday, Sunday or Holidays observed by the City.

## **SECTION 2 – Bid REQUIREMENTS AND CONDITIONS**

### **2.01 General**

Bidders may obtain complete sets of the Contract Documents, including the bid forms to be used for bidding, at the location designated in the Notice to Bidders. Bidders shall use complete sets of Contract Documents in the preparation of bids. The City makes copies of the Contract Documents available, on the above terms, for the sole purpose of obtaining Bids for the work and does not confer a license or grant permission for any other use of the Contract Documents.

### **2.02 Bid Prices to Cover Entire Work**

The quantities listed in the Bid Schedule do not govern final payment, as payments to the Contractor will only be made for the actual quantities constructed in accordance with the plans and specifications as measured by the appropriate unit of measurement indicated in the Bid Schedule, complete in place to the satisfaction of the Engineer. Such payment shall constitute the full compensation for furnishing all materials, labor, tools and equipment for performing the work, and for all other incidentals necessary to complete the work as shown on the plans and described in these specifications.

No separate payment will be made for incidentals or any items delineated on the plans or called for in the specifications to be supplied or installed which are not specifically listed as bid items but are required to complete the project. Full compensation for such items shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed.

### **2.03 Listing of Proposed Subcontractors**

The Bidder shall not list any Subcontractor who is ineligible pursuant to Labor Code, Sections 1777.1 and 1777.7, and Public Contract Code, Section 6109.

If, after the execution of the Agreement, the successful Bidder subcontracts except as provided for in the Subcontracting Act, or if the Bidder lists in his bid another Contractor who will in turn sublet portions constituting the majority of work covered by the prime contract, the Contractor shall be subject to the penalties set forth in the Subcontracting Act. If the Contractor violates any provisions of the Subcontracting Act, the Contractor violates the Agreement and the City may either terminate the Agreement or assess a penalty to the Contractor in accordance with the terms of the Subcontracting Act.

### **2.04 Proposal Guarantee**

In accordance with the Public Contract Code, Section 20170, each Bid shall be accompanied by a Bid Security, in the amount of ten percent (10%) of the Bid Amount.

### **2.05 Withdrawal of Bids**

After the time fixed in the Notice to Bidders for the opening of bids, no bid may be withdrawn for a period of at least ninety (90) calendar days without consent of the awarding authority that the Bidder has established all of the following occurrences identified in California Public Contract Code, Section 5103.

### **2.06 Rejection of Bids**

More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested in more than one proposal for the work contemplated may cause the rejection of all proposals in which that individual, firm, partnership, corporation or combination thereof is interested. If there is reason for believing that collusion exists among the bidders, any or all proposals may be rejected.

## **SECTION 3 – SCOPE AND CONTROL OF WORK**

### **3.01 Work to be Done**

It is the intent of this contract to obtain a finished, workmanlike job, complete and in place, with all equipment properly installed and operating. The work to be done consists of furnishing all labor, materials, tools, equipment and services necessary to complete the project, as further described in these Specifications, and as necessary to leave the site in a neat and finished condition with all equipment properly installed and working.

While the City has endeavored to accurately represent in the plans and specifications the physical conditions which may affect the cost of the proposed work, the City does not warrant the completeness or accuracy of such information. It is the Contractor's responsibility to ascertain the existence of any such conditions affecting the cost of the work, which would have been disclosed by reasonable examination of the site.

Conclusions pertaining to any test, investigation, statement or estimate of fact incorporated in the plans and specifications shall be considered by the Contractor to be a recommendation only. The Contractor may request equal access to the underlying or background information to arrive at his own opinion thereon, including his determination of how reliable might be any conclusion appearing in (or inferred from) the information. The Contractor may not rely upon "record drawings" or similar final or accepted drawings or maps constructed on public or private property. Such information may be used for reference only. Actual locations and depths shall be determined by field investigations by the Contractor.

No oral or telephonic agreement or conversation with any officer, agent, or employee of the City or the Engineer, either before or after execution of the contract, shall affect or modify any of the terms or obligations contained in any of the contract documents.

### **3.02 Plans and Specifications**

It is the intent of the Plans and Specifications to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. For convenience, the Specifications are arranged in several sections, but such separation shall not be considered as the limits of the work required by any separate trade. The terms and conditions of such limitations are wholly between the Contractor and his subcontractors. In general, the Special Provisions, General Provisions, and other sections of the specifications indicate the responsibilities of the Contractor and the quality of material and methods of workmanship. The plans indicate dimensions, quantities, positions, and various other details of construction.

Any work, materials or equipment that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words, which have a well-known technical or trade meaning, are used to describe the work, materials or equipment, such words shall be interpreted in accordance with that meaning.

### **3.03 References to Standards and Codes**

Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of the opening of bids except as may be otherwise specifically stated.

### **3.04 Authority of the Engineer**

The City has the final authority in all matters affecting the work. Within the scope of the Agreement, the Engineer has the authority to enforce compliance with the Plans and Specifications and the Contractor shall promptly comply with instructions from the Engineer. The decision of the Engineer is final and binding on all questions relating to: quantities; acceptability of materials furnished and work performed; equipment; work execution, rate of progress or sequence of work; and interpretation of the Plans,

Specifications, or other drawings. This shall be precedent to any payment under the Agreement, unless otherwise ordered by the City.

### **3.05 Contract Documents and Precedence**

The Contract Documents consist of the documents listed below, in order of precedence. If there is a conflict between component parts of the Contract Documents, the document highest in precedence controls.

- a. Change Orders.
- b. Directives.
- c. Permits in the following order: those issued by other agencies, those issued by the City.
- d. Project Specifications, in the following order – Supplemental Agreements, Addenda, General Construction Contract, Instructions to Bidders, Notice Inviting Bids, Special Provisions, General Provisions and Technical Specifications.
- e. Project Plans and Drawings. Figure dimensions on drawings shall govern over scale dimensions. Details shall govern over general arrangements.
- f. County of San Mateo Standard Specifications.
- g. County of San Mateo Standard Plans and Details.

All of the individual components of the Contract Documents are intended to be complementary and what is required by one shall be binding as if required by all. Interpretation of a disputed meaning or intent of the plans and specifications shall be made initially by the Engineer in accordance with the application of the order of precedence. Any final decision required regarding precedence and the clarification of discrepancies in the Contract Documents shall be made by the Engineer.

### **3.06 Record Documents**

The Contractor shall keep at the worksite a record copy of all Drawings, Specifications, Addenda, Change Orders, Work Directives, Field Orders and written interpretations and clarifications. These record documents together with all approved submittals, samples and shop drawings will be available to the Engineer as a reference at all times.

### **3.07 Record Drawings**

- a. The Contractor shall maintain a "job site" print of contract drawings and favorably reviewed shop drawings and "design/build" design drawings on the construction site at all times. These "job site" drawings are to be marked up daily with red ink or pencil to record:
  1. where actual installation differs from that shown on the original drawings,
  2. where underground or concealed features are uncovered during the work, whether unforeseen or not,
  3. field changes or deletions to the work,
  4. additional work, whether by Contract Change Order or not.

Underground features and features that are concealed during construction, or work that is added or changed, shall be recorded by both scaling and dimensioning. Elevation shall be recorded accurately to 0.1' and plan dimensions to 0.25'.

Maintaining "job site" record drawings up to date on a daily basis will be subject to specific inspection by the City. Progress payment requests will not be processed unless appropriately certified as to the currency of record drawing updating.

Each "job site" record drawing print shall be stamped "Contractor's Record Drawing" and signed and dated by the Contractor's Representative.

When a portion of the work is "design/build," the Contractor shall transfer all changes to the original (or a reproducible) of the design drawings. Drafting standards shall be in accordance with currently acceptable engineering standards, and they shall be clearly marked "RECORD DRAWINGS".

- b. Record Drawings Submittal - Organize record drawing sheets into a manageable set, bind with durable paper cover sheets, and print suitable titles, dates and other identification on the cover. Upon completion of work, submit the "job site" record drawings for City's review.

### **3.08 Reuse of Documents**

Neither the Contractor nor any Subcontractor or supplier or other person or organization performing or furnishing any of the work under a direct or indirect agreement with the City shall have any title or rights to any of the Drawings, Specifications or other documents (or copies thereof) which bear the seal of the design engineer. Such documents shall not be reused on extensions of the project or for any other project without written consent of the City and the design engineer.

### **3.09 Subsurface Data**

All soil and soil test data, water table elevations, and soil analyses included or referred to in the Contract Documents apply only at the location of the test holes and to the depths indicated. Soil test reports for test holes which have been drilled are available for inspection at the office of the Engineer. Any additional subsurface exploration shall be done by the Contractor at their own expense.

The elevation of the water table indicated by soil test reports is that which existed on the date the test hole was drilled. It is the Contractor's responsibility to determine and allow for the possibility of differing ground water elevations on the date of the project's construction. A difference in elevation between ground water shown in soil boring logs and ground water actually encountered during construction will not be considered as a basis for extra work.

### **3.10 Right-of-Way**

Acquisition of right-of-way or permanent easements necessary for the improvements as shown on the plans will be provided by the City. Unless otherwise provided, the Contractor shall make his own arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas, easements, and temporary facilities required. Contractor shall identify and hold the City harmless from all claims for damages resulting from such actions.

### **3.11 Removal of Defective Work**

The Contractor's Quality Control Manager shall be responsible for certifying that all materials and all work is installed in accordance with the Contract Documents. The Contractor's Quality Control Manager must inspect all work for compliance with the project documents and shall review and sign all test results. Additionally the Contractor's Quality Control Manager shall notify the Owner of any non-compliant work within 24 hours, plus provide a proposal for corrective measures within 48 hours. As part of the monthly progress pay applications, the Contractor's Quality Control Manager shall also sign certification that all work included in the progress pay application is in compliance with the contract documents.

Any work which does not conform to the requirements of these specifications shall be considered as defective, and all such work or materials, whether in place or not, shall be rejected by the Owner and, unless otherwise permitted by the Owner, shall be rectified/removed immediately from the site of the work. Rejected work shall be rectified/replaced by the Contractor at the Contractor's expense. No rejected work, the defects of which have been subsequently corrected, shall be used until accepted in writing by the Owner.

### **3.12 Acceptance of Defective Work**

The City shall have the option, at its sole discretion and by notice to the Contractor, to accept defective work instead of requiring its removal or correction, in which case the contract sum shall be reduced by an amount equal to the difference between the value to the City such work would have were it complete, correct, and in conformity with the Contract Documents and the value to the City of such defective work. Such option shall be exercised solely by notice to the Contractor and shall not be implied from any act or omission by the City or the Engineer. If the remaining payments and retention are insufficient to cover the amount of the reduction of the contract sum, the Contractor shall promptly pay to the City the amount of any such deficiency.



### **3.13 Submittals**

Within ten (10) working days following the Notice to Proceed, the Contractor shall provide a detailed list of all individual submittals required to be submitted under the contract. The list shall reference the specification section and paragraph that requires the submittal along with the date the Contractor plans to transmit the submittal to the City for review.

Unless otherwise requested by the Engineer, submittals shall be provided electronically in .pdf format at least 28 calendar days prior to the approval being necessary for the work. Submittals shall be transmitted via e-Builder submittal module. Large submittals consisting of reports, oversized or colored pages, full sized shop drawings, manuals contained in binders, or submittals in other forms not easily reproduced shall be provided in hard copy format.

When requested by the Engineer, the Contractor shall provide hard copy submittals for items included in the Special Provisions.

For items requiring shop drawings, no materials shall be furnished, and no work shall be performed, until the drawings have been favorably reviewed. Shop drawings shall be of a size and scale to clearly show all necessary details.

After review by the City of each of the Contractor's submittals, submittals will be marked with actions defined as follows:

- a. NO EXCEPTIONS TAKEN – Accepted subject to its compatibility with future submissions and additional partial submissions for portions of the work not covered in this submission. Does not constitute acceptance of deletion of specified or required items not shown in a partial submission.
- b. MAKE CORRECTIONS NOTED – The same as item (a), except that minor corrections as noted by the City shall be made by the Contractor. No resubmission is required.
- c. AMEND AND RESUBMIT – Rejected because of major inconsistencies or errors which shall be resolved or corrected by the Contractor prior to subsequent review by the City.
- d. REJECTED – Submitted material does not conform to plans and Specifications in major respects. This material is not expected to be resubmitted.
- e. ACCEPTED FOR RECORD – Submittals not reviewed by the City but accepted for record purposes.
- f. All submittals (shop drawings and supporting data, catalogs, schedules, etc.), shall be submitted as the instruments of the Contractor, who shall be responsible for their accuracy and completeness. These submittals may be prepared by the Contractor, subcontractors, or suppliers, but the Contractor shall ascertain that submittals meet all of the requirements of the Contract Documents, while conforming to structural, space, and access conditions at the point of installation. The Contractor shall check all submittals before submitting them to the City.
- g. By submitting the bid, the Contractor agrees that the City has no duty to the Contractor or any of its subcontractors or suppliers for the accuracy, completeness, or sufficiency of the City's review of submittals. The Contractor further agrees to incorporate this requirement in all of its subcontracts or purchase agreements.
- h. Each submittal shall relate only to one item or groups of items logically related.
- i. Allow the number of days stated in the Special Provisions for the City's review of submittals and resubmittals. Note that there are some different requirements for Construction Schedule submittals. No extension of time will be allowed through failure of the Contractor to either transmit submittals sufficiently in advance of the work or on account of resubmittals.



- j. Incomplete submittals will not be accepted.
- k. If the City's review of a submittal requires cross reference to, or coordination with, another submittal not yet transmitted to the City for review, it will be returned to the Contractor for resubmittal at a more appropriate time.

Alternatively, and at the City's discretion, the City may elect to advise the Contractor that the submittal review will be deferred for review. In such circumstances the City's review time will correspondingly be increased so the effective review time allowed is not reduced.

- l. If the City's review of a submittal reveals that supplemental information is necessary to complete the review, it will be returned to the Contractor for augmentation and resubmittal.

Alternatively, and at the City's discretion the Contractor may be requested to provide supplemental information to enable a review to be completed, in which case the City's review time will correspondingly be increased so the effective review time allowed is not reduced.

- m. The City shall review schedules, shop drawings, etc., submitted by the Contractor only for general design conformance with the concept of the project and compliance with the information given in the Contract Documents. Acceptance by the City of any drawings, method of work, or any information regarding materials and equipment the Contractor proposes to furnish shall not relieve the Contractor of its responsibility for any errors therein and shall not be regarded as an assumption of risks or liability by the City, or any officer or employee thereof, and the Contractor shall have no claim under the Contract on account of the failure or partial failure or inefficiency or insufficiency of any plan or method of work or material and equipment so accepted. Such acceptance shall be considered to mean merely that the City has no objection to the Contractor using, upon its own full responsibility, the plan or method of work proposed, or furnishing the materials and equipment proposed.
- n. Submittals shall be reviewed as a complete package and will not be returned marked with more than one of the actions noted above. Any submittal that requires further review shall be resubmitted in its entirety until the full submittal has been favorably reviewed.
- o. The Contractor shall not proceed with the fabrication, delivery, construction or installation of items requiring a submittal without favorable review of the submittal by the City. No site construction shall commence without a favorable review of the Baseline Construction Schedule, and the Submittal List. Items (a) and (b) above (no resubmittal required) are considered "favorable review". Items (c) and (d) above (correction and resubmittal required) are considered "unfavorable review". Favorable review shall not relieve the Contractor of its obligation to meet safety requirements and all other requirements of Law, nor constitute a Contract Change Order.

Favorable review of the shop drawings by the Engineer is interpreted to mean that there is substantial and acceptable conformance with the contract plans, but details of design may not necessarily be checked for adequacy or accuracy. Such acceptance shall not relieve the Contractor from the responsibility for errors or omissions in the shop drawings or from deviations from the contract documents unless such errors, omissions, or deviations were specifically called to the attention of the Engineer in writing. The Contractor shall be responsible for the correctness of the shop drawings, for shop fits and field corrections, and for the results obtained by the use of such plans.

Neither review nor approval of Contractor's submittal shall relieve the Contractor of its obligations with respect to the performance under the contract.

### **3.14 Substitutions**

A request for substitution will be considered if received within 20 calendar days from the date of Award, or within 15 days from the date the Notice to Proceed is issued, whichever is the later. Within 10 calendar days of receipt of the request for substitution, the City may request additional information necessary for

evaluation. Within 21 calendar days from receipt of the request for substitution, or 14 calendar days from receipt of additional information, whichever is later, the City will respond to the request for substitution. If a decision on use of a substitute cannot be made within these time limits, the product specified shall be used.

Proposed requests by the Contractor for changes in products, materials, equipment, and methods of construction required under the Contract Documents after the award of contract are considered "requests for substitutions". For proposed "or equal" substitutions, attention is directed to Section 5.03, "Trade Names or Approved Equals" of these General Provisions. The following are not considered substitutions:

- a. Revisions to Contract Documents requested by the City.
- b. Specified options of products and construction methods included in Contract Documents.
- c. Compliance with governing regulations and orders issued by governing authorities.

Each request for substitution shall be prepared and presented to the City in accordance with the procedures for submittals, except that the following additional information shall be provided.

- a. An explanation of the advantages to the City for accepting the substitution.
- b. A comparison of significant qualities of the proposed substitution with those specified.
- c. A list of changes or modifications needed to other parts of the work and to construction performed by the City and separate Contractors that will be necessary to accommodate the proposed substitution.
- d. A statement indicating the substitution's effect on the Construction Schedule compared to the Construction Schedule without acceptance of the substitution. Indicate the effect of the proposed substitution on overall contract time.
- e. Cost information, including a proposal of the net change, if any, in the Contract Sum.
- f. Certification that the substitution is equal to or better in every respect to that required by Contract Documents, and that it will perform adequately in application indicated. Include Contractor's waiver of rights to additional payment or time extensions that may be necessary because of the substitution's failure to perform adequately.

The Contractor's substitution request will be considered by the City when the following conditions are satisfied, as determined by the City; otherwise, requests will be returned without action except to record noncompliance with these requirements:

- a. Extensive revisions to Contract Documents are not required.
- b. Proposed changes are in keeping with the general intent of Contract Documents.
- c. The request is timely, fully documented and properly submitted.
- d. The specified product or method of construction cannot be provided within the Contract Time. The request may not be considered if the product or method cannot be provided as a result of failure of the Contractor to pursue the work promptly or coordinate activities properly, unless the product proposed is at least equal or better.
- e. A substantial advantage is offered the City, in terms of cost, time, energy conservation or other considerations of merit, after deducting offsetting responsibilities the City may be required to bear. Additional responsibilities for the City may include additional compensation to the Consulting Engineer/Architect for redesign and evaluation services, increased cost of other

construction by the City or separate contractors, and similar considerations.

- f. The specified product or method of construction cannot receive necessary approval by a regulatory agency, and the requested substitution can be approved.
- g. The specified product or method of construction cannot be provided in a manner that is compatible with other materials, and where the Contractor certifies that the substitution will overcome the compatibility.
- h. The specified product or method of construction cannot be coordinated with other materials, and where the Contractor certifies that the proposed substitution can be coordinated.
- i. The specified product or method of construction cannot provide a warranty required by the Contract Documents and where the Contractor certifies that the proposed substitution can provide the required warranty.

The Contractor's submittal and City's acceptance of Shop Drawings, Product Data or Samples that do not comply with the Contract Documents does not constitute a valid request for substitution, nor does it constitute acceptance of a substitution.

The City will notify the Contractor of acceptance or rejection of the proposed substitution within the time limits stated in the Special Provisions. If a decision on use of a substitute cannot be made within these time limits the product specified shall be used.

No extension of time will be allowed through failure of the Contractor to either transmit requests for substitution sufficiently in advance of the work, or on account of processing time outside the time limits noted.

### **3.15 Survey**

The Contractor shall provide all survey required by an independent land surveyor licensed in the State of California.

### **3.16 Construction Staking Lines and Grades**

Unless otherwise stated in the Special Provisions, the Contractor shall provide, preserve, and replace if necessary, all of the necessary construction stakes required for the construction of the project. Grades for underground conduits will be set on the ground surface and shall then be transferred to the bottom of the trench by the Contractor.

Stakes or marks will be set by a California Licensed Surveyor or a California Registered Civil Engineer to establish the lines and grades required for the completion of the work as specified in the Contract Documents. It shall be the Contractor's responsibility to notify the Engineer of any discrepancies found between field grades and notes shown within the Contract Documents.

Contractor shall furnish horizontal control and cut sheets to the Engineer immediately upon the setting of construction or boundary markers. Upon completion, all work shall conform to the lines, elevations, and grades shown on the plans. All staking including staking notes and notations on survey stakes shall be in accordance with the Caltrans Staking Manual. All staking notes shall be provided within 24 hours after survey staking.

### **3.17 City's Construction Inspector's Work Hours**

The Contractor shall give the City one working day's notice before beginning work so the City's inspection of the work can be arranged. Regular working hours for City Construction Inspectors are between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding City holidays. If the Contractor works outside these times, the Contractor may be charged for additional inspection.

### **3.18 Inspection of the Work**

All work is subject to inspection and approval of the Engineer. Unless otherwise stated in the specifications, the City shall perform all required inspections. The Contractor shall notify the Engineer before noon of the working day before inspection is required. Unless otherwise authorized, work shall be done only in the presence of the Engineer. Any work done without proper inspection will be subject to rejection. The Engineer shall at all times have access to the work during its construction at shops and yards as well as the project site. The Contractor shall provide every reasonable facility for ascertaining that the materials and workmanship are in accordance with the Contract Documents. Inspection of the work shall not relieve the Contractor of the obligation to fulfill all conditions of the contract.

If a portion of the work is covered contrary to the Engineer's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the Engineer, be uncovered for the Engineer's observation and be replaced at Contractor's expense without adjustment of the contract time or the contract sum.

If a portion of the work has been covered, which is not required by the Contract Documents to be observed or inspected prior to it being covered and which the Engineer has not specifically requested to observe prior to its being covered, the Engineer may request to see such work and it shall be uncovered and replaced by Contractor. If such work is in accordance with the Contract Documents, the costs of uncovering and replacing the work shall be added to the contract sum by change order; and if the uncovering and replacing of the work extends the contract time, an appropriate adjustment of the contract time shall be made by change order. If such work is not in accordance with the Contract Documents, the Contractor shall pay such costs and shall not be entitled to an adjustment of the contract time or the contract sum.

### **3.19 Special Inspections**

Unless otherwise indicated in the Contract Documents, all special inspections are required to be provided by an independent company, properly certified, coordinated and paid for by the Contractor.

### **3.20 Sampling and Testing**

All sampling and testing is to be performed **by the Contractor** in order to meet the standard expressly described in the specification and in the City's Quality Assurance Program. Unless otherwise stated in the Contract Documents, all required sampling and testing will be performed directly by an independent laboratory, coordinated and paid for by the Contractor. Contractor shall cooperate with the City in coordinating the necessary testing. The coordination of testing is the responsibility of Contractor. The coordination of testing shall be the responsibility of the contractor. The frequency and location of tests shall be as indicated in the Special Provisions and the Technical Specifications. All compaction test sites deeper than five (5') feet below grade shall be properly shored by the Contractor to protect testing personnel.

The cost for performing re-tests due to failures, or additional call-outs if work is not ready to test, will be paid for by the Contractor. The City shall require retesting until all required tests are successfully passed.

## **SECTION 4 – CHANGES IN WORK**

### **4.01 Limited City Authority to Approve Change Orders**

The Contractor recognizes that the City is a public agency and that it can only act through its duly authorized agents. In this regard, the Contractor agrees that only written change orders, executed by the City, shall be valid.

### **4.02 Contractor Liability for Unapproved Change Orders**

Unless a valid change order is issued, all changes in the work performed by the Contractor shall be at the Contractor's own risk, and shall not be entitled to any additional compensation. Furthermore, the Contractor may be required to make the work conform to the plans and specifications. No act or series of acts by the City during the course of the contract shall be deemed to constitute a waiver of the City's rights to rely upon this provision.

### **4.03 Non-Material Change Requests by the Contractor**

Changes in the plans and specifications requested in writing by the Contractor, which do not materially affect the work and which are not detrimental to the work or to the interests of the City, may be granted to facilitate the work, when approved in writing by the Engineer. If such changes are granted, they shall be made at a reduction in cost or at no additional cost to the City. Nothing herein shall be construed as granting a right to the Contractor to demand acceptance of such changes or to increase the contract sum or contract time as a result of the proposed change.

### **4.04 Directives**

The Engineer may issue Directives in the form of Field Orders, Clarifications, responses to Requests for Information, or any other document which makes interpretations or clarifications to the Contract Documents. Directives shall be binding upon the Contractor, and the Contractor shall promptly carry out the requirements of such Directives.

### **4.05 Requests for Information, Inconsistencies and Changed Conditions**

Before undertaking each part of the work, the Contractor shall carefully study all pertinent figures shown in the Contract Documents and verify that all applicable field measurements are free of conflicts, errors, discrepancies, inconsistencies and omissions. If such conditions are discovered, the Contractor shall notify the Engineer by writing a Request for Information, and await direction from the Engineer before proceeding.

The means of seeking this clarification shall be via e-Builder Request for Information process.

If the Contractor encounters a changed condition, as defined by one or more of the conditions below, the Contractor shall notify the Engineer by submitting a Request for Information before proceeding.

- a. Material differing from that represented in the Contract which the Contractor believes may be hazardous waste, as defined by Health and Safety Code, Section 25117 that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provision of existing law; and
- b. Subsurface or latent physical conditions at the site differing materially from those represented in the Contract Documents; and
- c. Unknown physical conditions at the site of any unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the work and of the character provided for in the Contract Documents.

No extension of Contract time shall be made by the City due to the Contractor's failure to provide a timely written notice of any inconsistency or changed condition requiring direction. The Engineer will respond to the Contractor's Request for Information, providing an interpretation, clarification or change order for an

appropriate adjustment in contract time and cost pursuant to General Provisions, Section 4.07, “Change Orders”. Contractor shall wait for the Engineer’s written response to a Request for Information before proceeding with any work.

The Contractor shall not be liable to the City for failure to report any conflict, error, or discrepancy in the Contract Documents, unless the Contractor had actual knowledge or could foresee such conditions as may be discovered by a reasonable examination of the work site or materials. If the Contractor performs any construction activity in which he knows or should know involves an error, inconsistency, ambiguity, or omission referred to in this Section, without notifying and obtaining the written consent of the Engineer, Contractor shall be responsible for the resultant costs, including, without limitation, the costs of correcting defective work. However, in an emergency affecting the safety of persons or property, the Contractor shall take all reasonably necessary precautions to prevent or minimize damage, injury, or loss.

#### **4.06 Extra Work**

New or unforeseen work may be classified as “Extra Work” when the Engineer determines that the work is not covered by contract unit prices, not stipulated in the scope of work, represents work that is substantially different from what the Contractor bid upon, or falls under the category of a changed condition. The General and Special Provisions shall apply to all of the work, including extra work authorized. Payment for extra work will be made on the basis of General Provisions, Section 4.07, “Change Orders”.

The Contractor shall maintain records sufficient to distinguish the direct cost of extra work from the cost of other operations. The Engineer will compare his records with the Contractor’s reports, to make the necessary adjustments and compile the costs associated with the extra work.

When extra work reports are agreed upon and signed by both parties, they shall become the basis of payment. When extra work is still under negotiation or has not been agreed upon, the Contractor shall keep daily detailed and accurate records itemizing each element of cost and shall provide certified payroll, invoices, and other substantiating records and documentation.

When extra work is to be paid on a force account basis, the labor, materials and equipment used in the performance of that work shall be paid in accordance with the following. To the total of the direct costs computed, there will be an added markup of 35% to the cost of labor, 15% to the cost of materials and 15% to the cost of equipment. These markups shall constitute full compensation for any and all overhead costs, profit, or other costs not specifically designated as a cost of labor, material or equipment. When subcontractors perform force account work, an additional 5% markup shall be added to the total cost of the extra work to reimburse the Contractor for additional administrative costs. No markup for any subcontractor beyond the first tier shall be paid.

During the performance of extra work by force account, and as a condition to the Contractor’s right to an adjustment of the contract sum, the Contractor shall prepare daily reports itemizing all costs for labor, materials, and equipment rental. For labor costs, the reports shall include names, job classifications, hours worked and rates of pay. For equipment costs, the reports shall include size, type, identification number and hours of operation. All records and reports shall be submitted to the Engineer for approval on a daily basis. Reports shall be made on the City of East Palo Alto Daily Extra Work Report form.

#### **4.07 Change Orders**

At any time during the progress of the work, and without in any way rendering void the Contract, the City may order alterations, additions or deductions from the work by change order, without notice to sureties. When so ordered in writing, the Contractor shall proceed with work as directed by the change order.

The change order shall describe the change in the work, the adjustment of the contract sum (if any), and the adjustment of the contract time (if any). The Contractor shall not be entitled to any extension of time for the completion of the work by virtue of any change order unless the change order specifically affects the controlling operation and provides for this. If, after receiving a change order, the Contractor feels that they are entitled to an extension of time, the Contractor may, within five (5) working days file a written request for consideration by the Engineer.



The process of submitting a proposed change, a cost proposal, negotiating an agreed upon change order, or any failure to reach an agreement as to an adjustment in the contract sum or the contract time, shall not relieve the Contractor of their obligation to perform in accordance with the Contract Documents.

Change orders may be Unilateral Change Orders or Agreed Upon Change Orders. Upon the receipt of either form of change order, the Contractor shall proceed promptly and diligently with the extra work.

- a. *Unilateral Change Orders* – A Unilateral Change Order may be issued by the City without the Contractor's signature where the City determines that it is in the City's best interest to proceed with the work, and the change does not materially alter the character of the work. The Contractor shall be deemed to have accepted the terms of any Unilateral Change Order unless the Contractor submits a written protest with respect to the change order, no later than ten (10) working days following the Contractor's receipt of the change order. See General Provisions, Section 4.08, "Disputed Work".
- b. *Agreed Upon Change Orders* – Within five (5) working days after receiving a request from the City for a written proposal for an Agreed Upon Change Order, the Contractor shall provide the Engineer with a cost proposal in a form satisfactory to the Engineer, setting forth the Contractor's proposed adjustments to the contract sum and contract time for performing the extra work.

Compensation for Agreed Upon Change Orders shall be calculated based upon the bid item unit prices stated in the Bid Schedule and no additional markup for overhead or profit will be provided. If there are no unit prices for the extra work, the Contractor and the City may agree upon unit prices or lump sum prices, which shall be used to increase or decrease the contract sum. When extra work changes the scope of bid item work, payment can be made by paying an agreed upon unit price adjustment or lump sum price adjustment of compensation. In the absence of price agreement, the contract sum shall be adjusted by force account.

The City pays for change order work based on one or a combination of the following:

1. Bid item unit prices
2. Agreed upon unit prices
3. Agreed upon lump sum price
4. Force account
5. Adjustment of compensation

Changed Quantity Payment Adjustments:

- a. *Increases of More Than 25 Percent* – If the total bid item quantity exceeds 125 percent of the quantity shown on the Bid Item List and if no approved Change Order addresses payment for the quantity exceeding 125 percent, the Engineer may adjust the unit price for the excess quantity under the 2010 State Standard Specification, Section 9-1.04 (force account) or the following:
  1. The adjustment is the difference between the unit price and the unit cost of the total item pay quantity.
  2. In determining the unit cost, the Engineer excludes the item's fixed costs. You have recovered the fixed costs in the payment for 125 percent shown on the Bid Item List.
  3. After excluding fixed costs, the Engineer determines the item unit cost under the 2010 State Standard Specification, Section 9-1.04 (force account).
  4. If the payment for the number of units of a bid item in excess of 125 percent of the Bid Item List is less than \$5,000 at the unit price, the Engineer may not adjust the unit price unless you request it.
- b. *Decreases of More Than 25 Percent* – If the total item pay quantity is less than 75 percent of the quantity shown on the Bid Item List and if no approved Change Order addresses payment for the quantity less than 75 percent, you may request a unit price adjustment. The Engineer may adjust the unit price for the decreased quantity under the 2010 State Standard Specification, Section 9-

1.04 (force account) or the following:

1. The adjustment is the difference between the unit price and the unit cost of the total pay quantity.
2. In determining the unit cost, the Engineer includes the item's fixed costs.
3. After including fixed costs, the Engineer determines the item unit cost under the 2010 State Standard Specification, Section 9-1.04 (force account).
4. The City does not pay more than 75 percent of the item total in the Bid Item List.

c. Eliminated Items

1. If the Engineer eliminates an item, the City pays your costs incurred before the Engineer's elimination notification date.
2. If you order authorized material for an eliminated item before the notification date and the order cannot be canceled, either of the following occurs:
3. If the material is returnable to the vendor, the Engineer orders you to return the material and the Department pays your handling costs and vendor charges.
4. The City pays your cost for the material and its handling and becomes the material owner.
5. The Engineer determines the payment for the eliminated bid item under the 2010 State Standard Specification, Section 9-1.04 (force account).

Agreed Upon Price Adjustments – If there are no unit prices for proposed extra work, the Contractor and the City may agree upon unit prices or lump sum costs, by written change order, prior to commencing work. In the absence of any such agreement, the contract sum shall be adjusted by force account.

Force Account – When extra work is to be paid on a force account basis, the labor, materials and equipment used in the performance of that work shall be paid in accordance with the 2010 State Standard Specification, Section 9-1.04 (force account) and as provided for below. To the total of the direct costs computed, there will be an added markup of 35% to the cost of labor, 15% to the cost of materials and 15% to the cost of equipment. These markups shall constitute full compensation for any and all overhead costs, profit, or other costs not specifically designated as a cost of labor, material or equipment. When subcontractors perform force account work, an additional 5% markup shall be added to the total cost of the extra work to reimburse the Contractor for additional administrative costs. No markup for any subcontractor beyond the first tier shall be paid.

- a. *Labor* – Labor costs shall be based on the prevailing wage scale for each craft or type of work. Employer payments for payroll taxes and insurance, health and welfare, pension, vacation, and other direct labor costs shall be included and will be calculated as the Labor Surcharge stipulated in the State of California, Labor Surcharge and Equipment Rental Rates book.
- b. *Materials* – Materials cost shall be the cost of all materials purchased by the Contractor and used in the extra work and shall be the actual cost of such materials, including sales taxes, freight and delivery charges. The City reserves the right to approve materials to be furnished by the Contractor, sources of supply or, if necessary, to furnish the materials to the Contractor. No compensation will be paid to the Contractor for any material furnished by the City or for materials not used.
- c. *Equipment Rental* – The Contractor will be allowed the actual rental rate of equipment, prorated over the time the machinery or equipment is required. For Contractor owned equipment, this rate shall be as stipulated in the State of California, Labor Surcharge and Equipment Rental Rates book. In addition, the Contractor will be allowed reasonable move-in and move-out charges, if applicable. All equipment shall, in the opinion of the Engineer, be in good working order, good condition, and suitable for its purpose. Equipment or tools having a replacement value of \$200.00 or less, whether or not consumed by use, shall be considered small tools and no payment will be made therefore.



- d. *Other Services or Expenditures* – The City may authorize and approve payment for work performed by special forces or necessary services and expenditures other than labor, materials, and equipment rental.

During the performance of extra work by force account, and as a condition to the Contractor's right to an adjustment of the contract sum, the Contractor shall prepare daily reports itemizing all costs for labor, materials, and equipment rental. For labor costs, the reports shall include names, job classifications, hours worked and rates of pay. For equipment costs, the reports shall include size, type, identification number and hours of operation. All records and reports shall be submitted to the Engineer for approval on a daily basis. Reports shall be made on the City of East Palo Alto Daily Extra Work Report Form.

#### **4.08 Resolution of Disputes**

It is the intent of this Contract that disputes regarding the Contract be resolved promptly and fairly between the City and the 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 is required to initiate review, determination and resolution.

***4.08.1 Notice*** - Contractor shall provide a written notice of disputed work to the Engineer's attention prior to the commencement of and sufficiently in advance of performing the disputed work to allow the Engineer initial review of the disputed work. The notice shall be submitted in accordance with General Provisions, Section 4.05, "Requests for Information, Inconsistencies and Changed Conditions". If the Contractor disagrees with the Engineer's decision, 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 Engineer has not recognized as extra work, the Contractor shall notify the Engineer, in writing, of its intention to dispute the Engineer's decision.

Timely notice of potential claim is of great importance to the Engineer 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 Engineer has kept account of the work in question, shall not in any way be construed as proving the validity of the dispute.

Notice pertaining to decisions provided in General Provisions, Section 4.05, "Requests for Information, Inconsistencies and Changed Conditions", or such other determinations by the Engineer shall be filed in writing to the Engineer within ten (10) days of receipt of such decision and prior to the commencement of such work. Written notice shall be clearly titled "Notice of Potential Claim" and shall be numbered starting with Number 1.

Such notice of potential claim must be stated with specificity, including identification of the event giving rise to potential claim, the date of the event, and the asserted effect on contract sum and contract time. The notice of potential claim shall include adequate supporting data. Adequate supporting data for a potential claim for an adjustment of the contract time shall include scheduling data demonstrating the impact of the event on the completion of the work. Adequate supporting data for a potential claim for an adjustment of the contract sum shall include a detailed cost breakdown of the items allowed, isolating labor, material, and equipment costs, and providing detailed quantities and unit prices for changed work. If the exact amount of a potential claim is not ascertainable at the time such potential claim is made, the supporting data currently available shall be submitted. Supplemental data supporting the exact amount of the potential claim shall be submitted as soon as available.

In proceeding with a disputed portion of the Work, the Contractor shall keep accurate records of all costs, including a 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 Engineer daily, receipt of which shall not be construed as an authorization for or acceptance of the disputed work.

No claim for additional compensation or extension of time for a delay will be considered unless the provisions of General Provisions, Section 7.17, “Delays and Extensions of Time” 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 or any damages incurred by it because of the alleged extra work, changed work or other situation which had required notice been given, would have given rise to a right for additional compensation.

**4.08.2 Response by Engineer** - The Engineer 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 Engineer shall notify the Contractor in writing as to when a decision will be provided.

**4.08.3 Appeals to the Assistant Director of Public Works/City Engineer** - In the event the Contractor disagrees with the Engineer’s determination provided in accordance with Section 4.08.2, “Response by Engineer”, the Contractor may, within ten (10) days of receipt of such determination, appeal the determination to the Assistant Director of Public Works/City Engineer for review. The Assistant Director of Public Works/City Engineer shall review the appeal and transmit the decision in writing to the Contractor within 30 days from the date of receipt of the appeal.

In the event the Contractor disagrees with the determination of the Assistant Director of Public Works/City Engineer, the Contractor shall notify the Engineer, in writing within ten (10) days of receipt of such determination, of its intention to file a claim in accordance with General Provisions, Section 4.09, “Resolution of Claims Under Public Contract Code Section 20101” and Section 4.10. “Resolution of Claims under Public Contract Code Section 9204”. Failure of the Contractor to appeal the determination of the Engineer within said ten (10) day period shall constitute a waiver of the Contractor’s right to file a claim resulting from such determination or decision.

**4.08.4 Dispute Meetings** - From time to time the Contractor may request or the Engineer may call a special meeting to discuss outstanding disputes should it deem this a means of possible help in the resolution of the dispute. The Contractor shall cooperate and attend prepared to discuss its dispute and make available the personnel, subcontractors and suppliers necessary for resolution, and all documents which may reasonably be requested by the Engineer.

**4.08.5 Submission of Potential Claim Costs** – Potential claim costs must be submitted within thirty (30) days after the last cost of work for which the Contractor contends it is due additional compensation. But if costs are incurred over a span of more than thirty (30) days, then within fifteen (15) days after the thirtieth day and every month thereafter, the Contractor shall submit to the Engineer, as best the Contractor is able, its costs incurred for the claimed matter.

Potential claims shall be made in itemized detail and should the Engineer 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 Engineer. If the additional costs are in any respect not knowable with certainty, they shall be estimated as best can be done. The Engineer shall have the right as provided in Section 4, “Changes in Work” 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 4, “Changes in Work”.

#### **4.09 Resolution of Claims Under Public Contract Code Section 20104**

Disputes pertaining to this Agreement for three hundred and seventy-five thousand dollars (\$375,000) or less which cannot be resolved between the parties pursuant to Section 4.08, “Resolution of Disputes”, shall be resolved pursuant to the provisions of Public Contract Code commencing at Section 20104.

**4.09.1 Disputes for \$375,000 or Less** - 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 60 days (or, in the case of claims of less than \$50,000, within 45 days) of receipt of claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the 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 30 days (or, for claims of less than \$50,000, within 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 15 days of receipt of the City's response or within 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 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 and in accordance with the East Palo Alto Municipal Code. 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. Pursuant to East Palo Alto Municipal Code, the claim must be filed with the City Clerk.

4.09.2 Disputes 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 per the procedures established in Public Contract Code Section 9204 and per Section 4.10, "Resolution of Claims under Public Contract Code Section 9204" below.

4.09.3 Civil Action Proceedings - If a civil action is filed to resolve the claim, then between 30 and 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 15 days to select a disinterested third person as mediator. Mediation must commence within 30 days of submittal and conclude within 15 days of commencement unless the time is extended for good cause by the court.

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.

Arbitrators shall be experienced in construction law.

A party who appeals an arbitration award and does not obtain a more favorable judgment shall pay the attorney's fees on appeal of the other party. The City must pay interest at the legal rate on any arbitration award or judgment, commencing on the date when suit was filed. Except as otherwise provided in the Contract, the City must pay the undisputed portions of any claims.

Should either party to this Contract bring legal action against the other, the case shall be handled either by the Superior Court of the State of California in the County of Santa Clara, or the United States District Court, Northern District of California. The Agreement shall be construed and its performance enforced under California Law.

#### **4.10 Resolution of Claims under Public Contract Code Section 9204**

The provisions of this section are provided pursuant to Public Contract Code Section 9204. These provisions are applicable only until January 1, 2020 and then are repealed and not applicable to this Contract unless another State statute extends the date of these provisions.

4.10.1 Claim Definition - "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- a. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City.
- b. Payment by the City of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- c. Payment of an amount that is disputed by the City.

4.10.2 Claim Process - Upon receipt of a claim pursuant to this Section, the City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the City and Contractor may, by mutual agreement, extend the time period provided in this subsection.

The Contractor shall furnish reasonable documentation to support the claim.

If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, provision of General Provisions, Section 4.10.3.1, "City's Failure to Respond", shall apply.

4.10.3 Disputed Claims - If the Contractor disputes the City's written response, or if the City fails to respond to a claim issued pursuant to this section within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

For purposes of this section, mediation includes any nonbinding process, including, but not limited to,

neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4.10.3.1 City's Failure to Respond - Failure by the City to respond to a claim from the Contractor within the time periods described in this subsection or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied because of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the Contractor.

4.10.3.2 Interest - Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

4.10.3.3 Subcontractor Claims - If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the City because privity of contract does not exist, the Contractor may present to the City a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the City shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

4.10.3.4 Waiver of Provisions - A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

## **SECTION 5 – CONTROL OF MATERIALS**

### **5.01 Materials and Workmanship**

All materials, parts and equipment furnished by the Contractor in the work shall be new, high grade, and free from defects. Workmanship shall be in accordance with generally accepted standards. Materials and workmanship shall be subject to the Engineer's approval.

Materials and workmanship not conforming to the requirements of these specifications shall be considered defective and will be subject to rejection. Defective work or material, whether in place or not, shall be removed immediately from the site by the Contractor, at the Contractor's expense, when so directed by the Engineer.

If the Contractor fails to replace any defective or damaged work or material after notice from the Engineer, the Engineer may cause such work or materials to be replaced. The replacement expense shall be deducted from the amount to be paid to the Contractor.

Used or secondhand materials, parts and equipment is permissible only if permitted by the Special Provisions.

Submittals for specialized material or equipment to be used in the work that is not readily available from material suppliers (such as electroliers, luminaries, signal poles, heads, cable, controllers, pumps, etc.) shall be submitted within five (5) working days after Notice to Proceed. Time extensions will not be granted for project delays due to the unavailability of such specialized material and equipment unless the Contractor furnishes the Engineer with documentation of purchase order dates, acceptable reason for delay of delivery, or proof of diligent efforts to obtain said items from alternate sources.

The Contractor shall provide the Engineer with periodic reports to inform the Engineer of any changes in the projected material or equipment delivery dates.

### **5.02 Protection of Work and Materials**

The Contractor shall provide and maintain storage facilities and employ such measures as will preserve the specified quality and fitness of materials to be used in the work. Stored materials shall be reasonably accessible for inspection. The Contractor shall also adequately protect new and existing work and equipment for the duration of the contract.

The Contractor shall not, without the City's consent, assign, sell, mortgage or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the contract.

### **5.03 Trade Names or Approved Equals**

Whenever any particular material, process, or equipment is indicated by patent, proprietary or brand name, or by name of a manufacturer, such wording is used for the purpose of facilitating its description and shall be deemed to be followed by the words "or approved equal". Because products specified may have a uniqueness that can't be matched, the Contractor must "bid" the work based upon the products specified. If, during the submittal process, an equivalent product is proposed by the contractor, the contractor must provide data to show that the product is considered equal. Contractor shall also identify any price differences, which shall be considered as part of the substitution and if accepted, shall result in an appropriate credit or cost to the City by change order should the substitution be made.

Wherever catalog numbers and specific brands of trade names followed by the designation "or approved equal" are used in conjunction with a designated material, product, item, or service mentioned in these specifications, they are used to establish the standards of quality and utility required. "Or approved equal" proposals will be subject to acceptance by the City.



Unless otherwise authorized by the Engineer, the proposed substitution must be submitted in sufficient time, before the normal use or installation of the material, process or equipment, for the Engineer to determine the equivalency and for the Contractor to make any required purchases (including delivery).

At the Contractor's expense, shall furnish data concerning items offered by the Contractor as equivalent to those specified. The Contractor shall have the material tested as required by the Engineer to determine that the quality, strength, physical, chemical, or other characteristics, including durability, finish, efficiency, dimensions, service, and suitability are such that the item will fulfill its intended function. Installation and use of a proposed item shall not occur until after approval by the Engineer.

Test methods shall be submitted for approval by the Engineer prior to the test being performed on an item proposed for substitution. Test results shall be reported promptly to the Engineer, who will evaluate the results and determine if the proposed item is equivalent. The Engineer shall determine whether the material offered is equivalent to that specified, and the Engineer's findings shall be final. If a substitute offered by the Contractor is found to be not equal to the specified material, the Contractor shall furnish and install the specified material.

The specified contract completion time shall not be affected by any circumstances developing from the provisions of this Section.

#### **5.04 Inspection of Materials by City**

Unless otherwise specified, inspection may be required at the source for such typical materials and fabricated items as bituminous paving mixtures, structural concrete, metal fabrication, metal casting, welding, concrete pipe manufacture, protective coating application, and similar shop or plant operations.

Standard items of equipment such as electric motors, conveyers, elevators, plumbing fixtures, etc., are subject to inspection at the job site. Special items of equipment such as designed electrical panel boards, large pumps, sewage plant equipment, etc., are subject to inspection at the source, normally only for performance testing. The Special Provisions may specify additional inspection requirements.

#### **5.05 Inspection of Materials by Others**

When the City does not elect to make its own inspection at the source, the Contractor shall, at its expense, engage an inspector or accredited testing laboratory to inspect the materials, equipment or process. The inspector or representative of the testing laboratory shall judge the materials by the requirements of the plans and specifications. No materials or equipment shall be shipped nor any processing, fabrication or treatment of such materials shall be done without a favorable inspection. These materials shall be subject to re-inspection at the job-site.

#### **5.06 Certification**

The Engineer may waive material testing requirements of the Specifications and accept the manufacturer's written Certificate of Compliance or test data demonstrating that the materials to be supplied meet the requirements of the Specifications. A Certificate of Compliance is acceptable for authorizing the use of steel pipe in sizes less than 18 inches and vitrified clay, cast iron or ductile iron pipe in all sizes. The City may request any materials used on the basis of a Certificate of Compliance to be sampled or tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of the responsibility for incorporating materials in the work which conforms to the requirements of the Contract Documents. **The Certificate of Compliance shall be signed and dated by the manufacturer, state the lot number for which the Certificate applies, indicate the specifications which the materials comply with, state the quantity of material covered by the certificate, and clearly demonstrate that the materials certified are specifically to be used for this project. Unsigned, generic, or non-project specific certificates of compliances will not be accepted as a means of release. In addition, the Contractor's Quality Control Manager shall be responsible for reviewing the Certificates of Compliances to verify acceptability and conformance with these specifications prior to submitting to the City.**

### **5.07 Weighing and Metering Equipment**

All scales and metering equipment used for proportioning materials shall be inspected for accuracy and certified within the past 12 months by the State of California Bureau of Weights and Measures, by the County Director or Sealer of Weights and Measures, or by a scale mechanic registered with or licensed by the County.

The accuracy of the work by a scale service agency, except as stated herein, shall meet the standards of the California Business and Professions Code and the California Code of Regulations pertaining to weighing devices. A certificate of compliance shall be presented to the Engineer for approval prior to operation, and shall be renewed whenever required by the Engineer at no cost to the City.

All scales shall be arranged so they may be read easily from the operator's platform or area. They shall indicate the true net weight without the application of any factor. The figures of the scales shall be clearly legible. Scales shall be accurate to within 1 percent when tested with the plant shut down. Weighing equipment shall be so insulated against vibration or moving of other operating equipment in the plant area such that the error in weighing with the entire plant running will not exceed 2 percent for any setting nor 1.5 percent for any batch.

### **5.08 Calibration of Testing Equipment**

Testing equipment, such as but not limited to, pressure gages, metering devices, hydraulic systems, force (load) measuring instruments, and strain-measuring devices shall be calibrated by a testing agency acceptable to the Engineer at intervals not to exceed 12 months, and following repairs, modification, or relocation of the equipment. Calibration certificates shall be provided when requested by the Engineer.



## **SECTION 6 – UTILITIES**

### **6.01 Contractor's Obligation to Identify and Protect Subsurface Infrastructure**

The Contractor shall locate and protect service laterals, conduits, and appurtenances of any underground facility, the presence of which could be reasonably inferred from the Contract Documents or from the presence of visible facilities such as buildings, meters, and junction boxes, prior to doing any work that may damage any such facilities, or interfere with their service. Where underground main distribution conduits, such as water, gas, sewer, electric power, telephone, or cable television are shown on the plans, the Contractor shall assume that every parcel will be served by a service connection for each type of utility. The Contractor shall comply with all requirements for the protection of underground infrastructure.

It shall be the Contractor's responsibility to complete all work in a manner that satisfies utility company standards, providing if requested, detailed plans prepared by a California Registered Civil Engineer showing necessary temporary support of utilities during coordinated construction work. The Contractor is directed to contact these agencies before submitting bids and to be familiar with their requirements.

The Contractor agrees to assume liability and to hold the City of East Palo Alto, its officers, and employees harmless from any damages resulting from the existence of underground utilities and structures not reported to the Engineer, not indicated on the public records examined, or located at variance with that reported or shown on records examined.

### **6.02 Location**

The City will search known records and indicate on the plans those utilities, except service connections, which may affect the work. All available information regarding removal, relocation, or disconnection of utilities, or installation of new utilities, will be furnished to prospective bidders before the receipt of bids. The Contractor shall immediately report to the Engineer those utilities omitted from the plans or found substantially at variance with the location shown.

Existing and proposed utilities and improvements are shown in their approximate locations. Locations may not have been field verified and no guarantee is made as to the accuracy and completeness of the information shown. The fact that any facility is not shown on the plans shall not relieve the Contractor of responsibility under this Section. It shall be the Contractor's responsibility to determine the existence and location of utilities shown on the plans, indicated by field locating services, or evidenced by facilities visible in the field. No additional compensation will be allowed for delays incurred as a result of the Contractor's failure to field verify and/or pothole existing utilities prior to beginning construction. Potholing shall be considered as part of the various contract bid items and no additional compensation will be allowed.

At least two (2) working days prior to commencing work, the Contractor shall request utility owners to mark or otherwise indicate the location of their substructures. Contractor shall contact Underground Service Alert (USA) at (800) 642-2444 and the Engineer at least 48 hours prior to excavation. The locations of utilities as shown on the plans are approximate and are not to be construed as certainty. It shall be the Contractor's responsibility to determine the true location and depth of all utilities and service connections affecting or conflicting with the work, prior to the performance of the work. As necessary, the Contractor shall pothole these utilities prior to working in the area to avoid damage to them. Potholing shall be considered as part of the contract bid items, and no separate payment will be made. Contractor shall familiarize himself with the type, material, age and condition of any utility which may be affected by the work.

### **6.03 Protection**

As necessary or as directed by the Engineer, the Contractor shall field adjust proposed improvements to avoid conflicts with existing improvements. The Contractor shall not interrupt the service function or disturb the supporting base of any utility, without authority from the utility owner or order from the City.

Where protection is required to insure support of existing underground, overhead and at-grade utilities (including their associated structures and service connections) as shown on the plans, the Contractor shall furnish and place the necessary protection at Contractor's expense. In case of damage, the Contractor, without additional compensation, shall restore utilities to as good of a condition as they were found.

Upon learning of the existence and location of any utility omitted from or shown incorrectly on the plans, the Contractor shall notify the City and be fully responsible for protecting such utility. When authorized by the Engineer, additional protection may be paid by change order, for utilities other than a service connection.

The Contractor shall immediately notify the Engineer and the utility owner if the Contractor disturbs, disconnects or damages any utility. If the utility is located substantially as indicated on the plans, the Contractor shall bear the costs of repair or replacement.

When placing concrete around or contiguous to any utility, at the Contractor's expense, shall furnish and install a cushion of expansion joint material, clear opening, sleeve, or other suitable material approved by the Engineer so as to prevent embedment or bonding of the utility with the concrete.

#### **6.04 Shut Down Notification**

Contractor shall coordinate all shut downs with the City's Public Works Department, and follow all of their requirements for exercising and shutting off water valves on main lines. The Contractor shall have all materials required for the work at the job site prior to requesting a shut off.

Shut down of water or sewer services shall be done only after the Contractor has coordinated the shut down with the Engineer and the property owners. When a water main, sewer main, or service lateral is to be shut down, the Contractor shall coordinate with and notify the Engineer in writing, at least seventy-two (72) hours in advance of the shut down. Except for scheduled shutdowns and in cases of emergency, the Contractor shall notify all customers and effected parties of a shut down at least forty-eight (48) hours in advance by writing and four (4) hours in advance by person to allow adequate draw time. Once shut down, the Contractor shall proceed with the work in an expedient manner until the water lines or sewer lines are back in service.

#### **6.05 Removal**

Unless otherwise specified, the Contractor shall remove all portions of interfering utilities shown on the plans as 'abandoned' or "to be abandoned in place". Before starting removal operations, the Contractor shall ascertain from the utility owner whether abandonment is complete. The costs involved in the removal and disposal of utilities to be abandoned shall be considered as part of the contract bid items, and no separate payment will be made.

#### **6.06 Relocation**

When feasible, the owners of utilities within the area affected by the work will complete their necessary installations, relocations, repairs, or replacements before commencement of work by the Contractor. When the Contract Documents or plans indicate that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the owners and the work will be done at no cost to the Contractor.

Utilities interfering with the permanent project work, discovered after the award of the contract, shall either be relocated, altered, or reconstructed by the utility owners, or the Engineer may order changes in the work to avoid interference. Such changes will be addressed in accordance with General Provisions, Section 4, "Changes in Work".

When the plans or Specifications provide for the Contractor to alter, relocate, or reconstruct a utility, all costs for such work shall be absorbed in the contract bid items. Temporary or permanent relocation or alteration of utilities by and for the Contractor's convenience shall be the Contractor's responsibility, and the Contractor shall make all arrangements, obtain all approvals, and bear all costs. The Contractor may,

agree with the owner of any utility to disconnect and reconnect interfering service connections for the Contractor's own convenience or to expedite the work. The City shall not be involved in any such agreement.

### **6.07 Delays**

The Contractor is responsible for notifying utility owners in time to prevent delays attributable to utility relocations or alterations as called for in the Contract Documents. The Contractor shall not be entitled to damages or additional payment if such delay does occur. The Engineer will determine the extent of the delay on the project as a whole, and any commensurate extension of time.

### **6.08 Cooperation**

When necessary, the Contractor shall conduct operations so as to permit access to the worksite and provide time for utility work to be accomplished during the progress of the contract work.

## **SECTION 7 – PROSECUTION AND PROGRESS**

### **7.01 Notice to Proceed**

Following contract execution the City shall issue the Contractor a Notice to Proceed provided that the documents are acceptable to the City. Unless stated otherwise, the contract time shall commence upon the receipt date on the Notice to Proceed.

### **7.02 Commencement of Work**

Work shall commence within fifteen (15) calendar days following the receipt date on the Notice to Proceed, and shall be diligently prosecuted to completion within the time provided in the Notice to Bidders.

### **7.03 Administrative Duties**

The Contractor shall coordinate the scheduling and timing of administrative duties with other activities to avoid conflicts and to ensure orderly project progress. Such activities include, but shall not be limited to, the preparation of construction schedules, preparation and processing of submittals, requests for information and responding to requests for quotations, attending and preparing for progress meetings and coordinating project closeout activities.

### **7.04 Construction Schedule**

The Contractor shall submit to the Engineer an acceptable Critical Path Method (CPM) progress schedule showing the critical path for completing the various items of work within the number of contract days specified. The schedule shall show the order in which the Contractor proposes to carry out the major items of work and the dates on which the Contractor will start and finish the various items (including procurement of materials and equipment). If requested, the schedule shall reflect person/crew hours and equipment loading for various construction activities in order for the City to better evaluate the proposed schedule.

The Contractor shall submit a schedule showing all work completed within the contract time. If the Contractor's schedule shows completion prior to the contract time this creates float at the end of the schedule, as a mutual resource. For example, the City will not charge liquidated damages in case the actual completion of work goes beyond the contractor's proposed completion date as long as the contract time is not exceeded. Similarly, the Contractor cannot charge any extended overhead or any additional costs if the Contractor's proposed completion date is not met for any reason as long as the completion is not delayed beyond the contract time. Contract time is the specified contract duration plus any additional days provided by contract change order.

A Preliminary Construction Schedule shall be submitted at least three (3) working days prior to the Preconstruction Conference. The Preconstruction Conference may be postponed if the Preliminary Construction Schedule is not received prior to the meeting. The Preliminary Construction Schedule shall be prepared in any time-scaled graphical form the Contractor chooses, and shall show or allow for the following;

1. The time scale shall be in days (not dates) and the work shall be shown as finishing on, or before, the number of days specified as the Contract Duration.
2. Specified Milestones shall be identified and shall conform to specification requirements.
3. Time for Contractor's preparation of and City's review of submittals, particularly in the early phases of the work, and for procurement activities.
4. Time for final inspection and completion of punchlist correction work at the end of the project.
5. The activities shall follow a logical progressive sequence to completion of the project.
6. The City will review the Preliminary Construction Schedule within the number of days stated in the Special Provisions, after receipt of the Preliminary Construction Schedule.

Within the number of days stated in the Special Provisions after receiving review comments of the Preliminary Construction Schedule, the Contractor shall submit the Baseline Construction Schedule. The City will review the Baseline Construction Schedule within the number of days stated in the Special Provisions. No progress payments will be made until the Baseline Construction Schedule has been favorably reviewed by the City. No construction work shall commence at the site until the Baseline Construction Schedule has been favorably reviewed by the City.

With each monthly progress payment request, the Contractor shall submit an Updated Construction Schedule showing actual progress of activities to date, and the remaining activities to completion. Progress payment requests will not be actioned if not accompanied by an Updated Baseline Schedule. Upon acceptance, the Baseline Construction Schedule shall become the working construction schedule unless replaced by a Revised Construction Schedule.

If at any time the Updated Baseline Construction Schedule indicates that the completion date has fallen behind the current due date by more than either 30 days or 20% of the remaining duration, whichever is less, or the activity logic has become unfeasible for any reason, the Baseline Construction Schedule shall be revised by the Contractor. The Revised Construction Schedule shall incorporate any additional or changed work to date (identified by Contract Change Order number or Request for Quote number (but not both)) and any revised activity logic. Requirements for submittal of the Baseline Construction Schedule shall apply to the Revised Construction Schedule. Revised Construction Schedules shall be identified by sequential number and a revision date. Upon acceptance, the Revised Construction Schedule shall become the working construction schedule unless replaced by a subsequent Revised Construction Schedule. Updating of Revised Construction Schedules shall occur as specified for the Baseline Construction Schedule, including the criteria requiring further revisions.

#### **7.05 Three Week Look Ahead Schedule**

The Contractor is required to furnish to the Engineer, on a weekly basis at the project's weekly progress meetings, a 3-week look ahead schedule. The schedule must show planned activities in sufficient detail to allow proper monitoring of the planned construction activities.

#### **7.06 Construction Sequence**

When required by the Special Provisions or plans, the Contractor shall follow the sequence of operations as set forth therein. The Contractor shall prepare and submit at the pre-construction meeting a staging or phasing plan identifying the sequence of construction work and traffic control needed to complete the project. The staging plan shall be subject to review and approval by the Engineer, prior to the start of construction. The goal of the phasing plan will be to minimize impacts to surrounding businesses and residents in the project areas.

#### **7.07 Recording Existing Conditions**

Existing conditions throughout the project site shall be photographed and video recorded by the Contractor. Recordings of these pre-construction conditions shall be complete, comprehensive, and shall be submitted to the Engineer five (5) days before start of construction. Recording shall include and show every detail of existing improvements, including the current condition of the curb, gutter, sidewalk, signs, landscaping, streetlights, roadway, structures near the project including face of buildings, canopies, shades, fences, calabazas creek, pedestrian/bike trail, and any other features within the limits of work.

#### **7.08 Preconstruction Conference**

The City shall designate a date and time for the pre-construction conference once the contract has been fully executed. The meeting shall be attended by responsible representatives of the Contractor, including the designated Contractor's Representative and Job Superintendent. At the pre-construction conference, the City shall discuss various administrative procedures and project coordination issues. The City will provide one full size set of reproducible contract drawings, and one unbound set of project specifications and addenda to the Contractor at the Preconstruction Conference, or shortly thereafter. The Contractor shall be responsible for conforming the drawings and specifications to incorporate the addenda, and for

printing sufficient copies of drawings and specifications for the use of the Contractor, subcontractors and suppliers.

At a minimum, the Contractor should be prepared to furnish and discuss the following:

1. Letter designating the Superintendent.
2. A list of key personnel and emergency contact information including telephone numbers to be used in case of emergency.
3. Preliminary schedule and project phasing plans, including lead time for submittal and fabrication of critical features.
4. Utility company coordination and/or permit issues.

### **7.09 Progress Meeting**

The Contractor's Project Manager, Job Superintendent and if requested by the City, Subcontractors shall attend weekly progress meetings to be scheduled by the Engineer at a time agreeable to both the Engineer and the Contractor. Contractor shall also attend special meetings in addition to regular progress meetings if necessary and directed by the Engineer.

### **7.10 Hours of Construction**

Construction activities shall be limited to the hours of 8:00 a.m. to 5:00 p.m., unless otherwise noted or further restricted in the Special Provisions, Contract Documents, or as directed by the Engineer. No work shall be done on weekends, holidays or outside these specified hours, unless otherwise approved by the Engineer. The Contractor shall take into consideration and coordinate time constraints for special events or activities organized by the City or other agencies. No mechanical equipment, including hauling or deliveries by trucks, shall start before 8:00 a.m. and all equipment must shut down before 5:00 p.m. unless approved by the Engineer.

Written requests to exceptions shall be provided by the Contractor at least 7 calendar days prior to proposed work.

Exceptions to working days or hours will be considered only when, in the opinion of the Engineer, construction during the specified work days/hours would inconvenience the public and neighboring residents more than working at other hours or on weekends or holidays, or is deemed to be in the best interest of the City. Exceptions will not be granted merely to expedite the construction work or for the Contractor's convenience. If these exceptions are granted, Contractor shall comply with East Palo Alto Municipal Code Section 16.08.030, which restricts hours of construction noise Monday - Friday between 7:00 a.m. and 6:00 p.m. Saturday hours of operation shall be between 8:00 a.m. – 5:00 p.m.

No work shall be performed on Sundays and City Holidays. City Holidays are:

- New Year's Eve and New Year's Day
  - If the 1<sup>st</sup> of January falls on a Saturday, the holiday will be observed on the Thursday and Friday prior to New Year's Day. If the 1<sup>st</sup> of January falls on a Sunday or Monday, the holiday will be observed on Friday and Monday.
- Martin Luther King, Jr. Day
- Lincoln's Birthday
- Cesar Chavez Day
- Presidents Day
- Memorial Day
- Independence Day
  - If the 4<sup>th</sup> of July falls on a Saturday, the holiday will be observed on the Friday prior to Independence Day. If the 4<sup>th</sup> of July falls on a Sunday, the holiday will be observed on the following Monday.

- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

### **7.11 Prosecution of Work**

To minimize public inconvenience and possible hazards and to restore the streets and other work areas to their original condition and former state of usefulness as soon as practicable, the Contractor shall diligently prosecute the work to completion. If, in the Engineer's opinion the Contractor fails to prosecute the work to the extent that the above purposes are not being accomplished, the Contractor shall, upon orders from the Engineer, immediately take the steps necessary to fully accomplish said purposes. All costs for prosecuting the work as described herein shall be absorbed in the Contractor's bid. Should the Contractor fail to take the necessary steps to fully accomplish said purposes, after orders of the Engineer to do so, the Engineer may suspend the work in whole or in part, until the Contractor takes said steps. With or without such suspension, the Engineer may cause such steps to be taken by force account or by other means at the Contractor's expense.

### **7.12 Suspension of Work**

Work may be stopped or suspended in whole or in part when, in the Engineer's opinion, the suspension is necessary and in the interest of the City. The Contractor shall immediately comply with any written order of the Engineer suspending work. Suspended work shall be resumed upon written order of the Engineer. An extension of contract time equal to the period of suspension shall be issued to the Contractor by change order. Any claim by the Contractor for an adjustment of the contract sum or the contract time shall be made within ten (10) working days after the start of suspension of the work.

If work is suspended through no fault of the City, all expenses and losses incurred by the Contractor during such suspensions shall be borne by the Contractor. If the Contractor fails to properly provide for public safety, traffic, and protection of the work during periods of suspension, the City may elect to do so, and shall deduct the cost thereof from monies due the Contractor. Such action will not relieve the Contractor from any liability.

### **7.13 Default by the Contractor and Termination of Control**

As a result of any of the following events, the Contractor shall be deemed to be in default:

- a. If the Contractor is in bankruptcy or makes a general assignment for the benefit of creditors, or
- b. If the Contractor fails to make prompt payment to subcontractors for labor or materials, or
- c. If a receiver is appointed on account of the Contractor's insolvency, or
- d. If the Contractor fails to provide enough properly skilled workmen or enough materials to insure compliance with the construction time schedule, or
- e. If the Contractor fails to perform any portion of the work within the timing requirements of the Contract Documents, or abandons the project site, or
- f. If the Contractor disregards instructions from the Engineer or violates any provision of the contract, or
- g. If the Contractor fails to replace or repair any damage caused by the Contractor or its agents, representatives, contractors, subcontractors, or employees in connection with the performance of the work, or
- h. If the Contractor violates any legal requirement related to the work.

In case of default, the City may give written notice to the Contractor and the Contractor's bonding agent that if the default is not remedied within ten (10) calendar days or the Contractor does not provide adequate written assurance to the satisfaction of the Engineer that the cure will be forthcoming, the Contractor's control over the work may be terminated as of the date specified in the written notice.

Upon such termination of control the City may enter upon and take possession of the entire work and may also take possession, for the purpose of completing the work, of all of the Contractor's tools, equipment



and appliances upon the work, and all materials on the site or stored off-site for incorporation into the work. The City may, at its sole option and without further notice to anyone, complete the work by day labor, by contract entered into by negotiations, by competitive bidding, by calling upon the performance of the performance bond surety, or by other means as the City, in its discretion, shall elect.

After termination of the Contractor's control over the work as herein provided, the Contractor shall not be entitled to any further payments under the contract until the entire work thereunder has been fully completed and finally accepted by the City. After such completion and acceptance, if the "unpaid balance of the contract price" (as defined in the next paragraph) exceeds the sum of the amounts expended by the City in taking over and completing the work, including all managerial and administrative expense incurred by the City on account thereof and the amount of all damages incurred by the City by reason of the Contractor's default, such excess shall be paid to the Contractor. If the said amount expended exceeds the unpaid balance, the Contractor and the Contractor's surety shall be liable to the City for the difference. At the Contractor's request, the expense incurred by the City in taking over and completing the work, and the amount of any damage incurred by the City by reason of the Contractor's default shall be audited and certified by an independent third party, whose certificate thereof shall be binding and conclusive upon the parties.

For the purposes of the computations required by the paragraph above, the "unpaid balance of the contract price" shall be the original contract price as adjusted by any change orders issued prior to termination of the Contractor's control, less all payments made on account thereof prior to such termination, and less any and all amounts withheld or paid pursuant to stop notices filed with the City upon claims of subcontractors or others from equipment, labor or materials furnished to the work on behalf of the Contractor.

Upon completion and acceptance of the work, the Contractor shall be entitled to the return of all materials not used in the work, but without claim against the City for loss or damage with respect thereto, and shall be entitled to the return of all the Contractor's equipment, tools and appliances taken possession of by the City, but without claim against the City for any charge for the use thereof or for usual and ordinary depreciation and wear and tear.

The exercise of remedies provided for in this sub-section, for default by the Contractor, shall be in addition to, and shall not be deemed a waiver by the City of any other rights or remedies due the City under the contract provisions, for default by the Contractor.

#### **7.14 City's Right to Terminate Contract**

The City may, at its option, terminate the Agreement, in whole or from time to time in part, at any time by giving notice to the Contractor. Upon such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the Contractor, the City shall pay the Contractor in accordance with this sub-section. Upon termination, the obligations of the Contractor for portions of the work already performed shall continue.

- a. Upon receipt of a Notice of Termination, the Contractor shall, unless the notice directs otherwise, do the following:
  1. Immediately discontinue the work to the extent specified in the notice.
  2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary to complete such portion of the work that are not to be discontinued.
  3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent that they relate to the performance of the discontinued portion of the work.
  4. Thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect materials, plants, and equipment on the project site or in transit thereto.



- b. Upon such termination, the City shall pay to the Contractor as a sole and exclusive remedy for the termination, the sum of the following, and the Contractor will be entitled to no other compensation or damages, and expressly waives same:
1. The amount of the contract amount allocated to the portion of the work properly performed by the Contractor as of the date of termination, less sums previously paid to the Contractor, plus
  2. Previously unpaid costs of any items delivered to the project site which were fabricated for subsequent incorporation in the work, plus
  3. Any proven losses with respect to materials and equipment directly resulting from such termination, plus
  4. Reasonable demobilization costs in excess of what would have been incurred if work were not terminated, plus
  5. Reasonable costs for preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The City may terminate the Agreement at its own discretion or when conditions encountered during the work make it impossible or impracticable to proceed, or when the City is prevented from proceeding with the Agreement by act of God, by law, or by official action of a public authority.

#### **7.15 Time of Completion and Days Charged**

The Contractor shall diligently prosecute and fully complete the work within the number of calendar or working days set forth in the Notice to Bidders or shall be subject to liquidated damages. Full liquidated damages will be assessed for delays beyond the required substantial completion date. Reduced liquidated damages will be assessed for delays after the substantial completion date. LDs Time is of the essence in the performance of all obligations under the Contract Documents, and all timing requirements shall be strictly adhered to unless otherwise modified by the City. See General Provisions, Sections 7.12, "Prosecution of Work", and 7.16, "Liquidated Damages".

Under a calendar day contract, City observed holidays and inclement weather delays are to be anticipated and unless there is a deviation from what is customary for the time of year the project is under construction, no additional days will be granted. Every day, including holidays, Saturdays and Sundays shall be counted as a day charged under a calendar day contract.

Under a working day contract, the Contractor will be given credit for City observed holidays and inclement weather delays, in accordance with the State Standard Specifications. Should the Contractor prepare to begin work at the regular starting time in the morning of any day on which inclement weather, or the conditions resulting from the weather prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operations for at least 60 percent of the total daily time being currently spent on the controlling operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter.

#### **7.16 Liquidated Damages**

The City and the Contractor, by execution of the agreement, each agree that time is of the essence in the performance of the work, and that actual damages for inconvenience and loss from any delay in completion of the contract beyond the date provided in the Notice to Bidders is extremely difficult or impossible to determine.

The City and the Contractor further agree, as specified in the Notice to Bidders, that liquidated damages shall be assessed for each and every calendar or working day required to complete the contract in excess of the contract time established for the project, and that the amount stated therein is a reasonable

estimate of the amount of such damages. The Engineer may deduct any liquidated damages owed to the City, as determined by the Engineer from any payments otherwise payable to the Contractor under this agreement.

Nothing contained herein shall limit the City's rights or remedies against Contractor for any default other than failure to complete the work within the contract time. This provision for liquidated damages shall not be applicable nor act as a limitation upon the City if the Contractor abandons the work. In such event, the Contractor shall be liable to the City for all losses incurred.

The date of the Engineer's Certificate of Substantial Completion shall be the termination date, if applicable, of full liquidated damages. The completion date of the project shall be the termination date, if applicable, of reduced liquidated damages, after substantial completion. Tiered liquidated damages shall be more fully detailed in the Special Provisions.

Separate from the above-mentioned liquidated damages, the Contractor may be responsible for paying all damages incurred by third parties due to non-completion of the project by the date specified.

### **7.17 Delays and Extensions of Time**

- a. *Excusable Delays* – shall mean delays in the prosecution or completion of the work 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, suppliers, or any tier of the Contractor's subcontractors. Excusable Delays fall into the following categories:
  1. *Abnormal Delays* – Excusable Delays caused by acts of god, fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and shortages of materials 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 path activity.
  2. *Weather Delays* – Excusable Delays due to 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 for a period of at least five (5) hours per day toward completion of the current critical path activity.
  3. *Material Shortage Delays* – Excusable Delays due to shortages of material, provided that the Contractor submits satisfactory proof to the Engineer. For the proof to be satisfactory, the Contractor must demonstrate that every effort to obtain the 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 an excusable delay, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical price, unless it is shown to the satisfaction of the Engineer that such material was only available at exorbitant prices. A material shortage delay will not be considered for material ordered or delivered late or for material whose availability is affected by virtue of mishandled procurement. The above provisions shall apply equally to equipment to be installed in the work.
- b. *Compensable Delays* – shall include delays that occur in the prosecution or completion of the work, through no fault of the Contractor which 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 causes:
  1. Delays due solely to the actions and/or inactions of the City.

2. Delays due to changed conditions as defined in General Provisions, Section 4.05, “Requests for Information, Inconsistencies and Changed Conditions”.
  3. Delays due to other Contractors employed by the City who interfere with the Contractor's prosecution of the work as defined above.
- c. Inexcusable Delay – means any delay in the completion of the work beyond the expiration of the contract time resulting from causes other than Excusable Delays or Compensable Delays. An Inexcusable Delay shall not entitle the Contractor to an extension of the contract time or an adjustment of the contract sum.
  - d. Concurrent Delays – those periods of delay when the prosecution of the work is delayed during the same period of time due to causes from a combination of the delays defined as Excusable, Compensable or Inexcusable.

If the Contractor desires an extension of time, the Contractor shall file a written request based upon the delays reported. The Engineer will ascertain the facts, the extent of the delays, and the effect upon the entire project, and the City will grant an extension of time equivalent to verified time lost. The request for an extension of time must be made no later than ten (10) working days after the start of the condition that purportedly caused the delay, and no later than fifteen (15) working days after the date on which performance on the condition purportedly causing the delay has ended.

Contractor may make a delay claim for an extension of the contract time for an Excusable Delay or a Compensable Delay. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the contract time shall be the number of calendar days from the commencement of the first delay to the cessation of the delay which ends last. If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the contract time shall be the number of calendar or working days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Inexcusable Delay.

For a Compensable Delay, the Contractor may make a delay claim for an adjustment in the contract sum in an amount equal to the sum of the actual and unavoidable additional costs of labor, material, and equipment furnished at the site by the Contractor or subcontractors.

Extensions of time, when granted, will be based upon the effect of delays to the project as a whole and will not be granted for non-controlling delays to minor portions of the work unless it can be shown that such delays did, in fact, delay the progress of the project as a whole. For purposes of determining delays, all float associated with the project schedule shall belong to the project. See General Provisions, Section 7.04, “Construction Schedule”.

If delays are caused by unforeseen events beyond the control of either the Contractor or the City, such delays will entitle the Contractor to an extension of time as provided herein, but the Contractor shall not be entitled to damages or additional payment due to these delays. War, governmental regulations, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of work, other similar action of the elements, inability to obtain materials, equipment, or labor because of Federal Government restrictions arising out of National Defense, required extra work, action or inaction by the City, or other specific reasons as may be further described in the specifications may constitute such a delay. If delays beyond the Contractor's control are caused by reasons other than those mentioned above, but are substantially equal in gravity to those enumerated, an extension of time may be granted, if deemed by the Engineer to be in the best interests of the City.

For Compensable Delay periods resulting in indirect overhead expenses, the Contractor shall be reimbursed as provided for in General Provisions, Section 4, “Changes in Work”.

### **7.18 Substantial Completion**

When work in accordance with the Contract Documents has progressed to a stage of one-hundred percent (100%) complete, as determined by the Engineer, except for the completion of minor punch list items of deficiencies or omissions in the work which require correction in order to satisfy the agreement, yet do not impair the City's ability to occupy and fully utilize the work for its intended purpose, the project shall be deemed "Substantially Complete". Portions of the work may also be designated by the City as substantially complete if the Contract Documents require separate delivery.

When the Engineer determines that the work or such designated portions of the work are substantially complete, the Engineer will prepare and sign a Certificate of Substantial Completion. The date of substantial completion shall establish the date of occupancy by the City and the transfer of responsibility from the Contractor to the City for such items as security, maintenance, heat, utilities, insurance, and damage to the work from causes other than that of the Contractor. Unless otherwise indicated in the Certificate of Substantial Completion, the Contractor's guarantee for the work shall commence upon the date of substantial completion.

### **7.19 Project Completion and Closeout**

After the Contractor has received the Certificate of Substantial Completion and has only minor work remaining, project closeout may begin. The following items and procedures are required as part of the project close out process.

- a. Within 14 days from the issuance of the Certificate of Completion, a pre-final inspection will be scheduled and conducted by the City. As a result of the inspection, the City will advise the Contractor of any work that must be completed, in the form of a punch list.
- b. Following the completion of punch list items, the Contractor shall make a written request to the city to conduct a final inspection. The written request shall be accompanied by a Certification that the work has been performed in accordance with the Contract Documents and shall be on the Contractor's Certification of Completion form enclosed in Appendix A of these General Provisions.
- c. Upon satisfactory completion of the punch list items, the City will consider the construction work complete and issue a completion letter establishing the completion date and detailing required closeout items for the contract.
- d. The contractor shall provide a final payment request with lien releases (if applicable) in a format acceptable to the City.

Should it become necessary, due to developed conditions, for the City to occupy any portion of the work, or any part of any structure or equipment, before the contract is completed or accepted, such occupancy shall not constitute an acceptance of any part of the work, unless so stated in writing by the City.

### **7.20 Acceptance**

Acceptance by the Director of Public Works will be recommended after the work has been fully completed and when all the requirements for Acceptance are met as set forth in the Contract Documents. Following acceptance, a Notice of Completion will be filed with the County Recorder. Remaining contract retention will be released within 35 days of recording of the Notice of Completion with the County Recorder or within 60 calendar days, whichever is shorter.

### **7.21 Protection and Cleanup**

The scope of this project includes the protection of all work until completion of all the work and removal of all excess construction equipment, materials and debris from the site, in accordance with these specifications.

The Contractor shall be responsible for repair or replacement of work damaged due to any vandalism prior to completion of the work.

### **7.22 Risk of Loss**

The Contractor shall be responsible for the charge, care and protection of the project and shall bear all risks of injury or damage to the work, materials or equipment delivered to the site, by any means including fire, earthquake, wind, storm or other action of the elements, vandalism, or loss by theft, from the date of commencement of construction to the date of formal acceptance by the City Council. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work, and shall bear the entire expense thereof, except such injuries or damages that are caused by riot, insurrection, acts of the Federal or State Government, or a public enemy in time of war.

### **7.23 Use of Improvements During Construction**

The City reserves the right to take over and utilize all or part of any completed facility or appurtenance. Such action by the City will not relieve the Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use by public traffic, from the action of the elements or from any other cause attributable to the Contractor's operations or negligence. The Contractor will be required to restore such portions of the improvement before final acceptance. Nothing in this Section shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials.

## **SECTION 8 – RESPONSIBILITIES OF THE CONTRACTOR**

### **8.01 Contractor's Responsibility for the Work**

The Contractor shall supervise, coordinate, and direct the work using Contractor's best skill and attention. Contractor shall have control over and be solely responsible for construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the work in accordance with the terms of the Contract Documents.

The Contractor shall be responsible for assuring that all portions of the work, including those portions already performed under the Contract, conform to the requirements of the Contract Document and are ready to receive subsequent work.

The Contractor shall furnish and maintain in good condition all equipment and facilities as required for the proper execution and inspection of the work. Such equipment and facilities shall meet all requirements of applicable ordinances and laws.

### **8.02 Contractor's Responsibility for Subcontracted Work**

The City will deal directly with, and make all payments to the Contractor only. The Contractor shall be responsible for the coordination of all trades, subcontractors, and suppliers engaged upon the work. Neither the City nor the Engineer will undertake to settle any differences between the Contractor and the Contractor's subcontractors.

All persons engaged in the work, including subcontractors, will be considered as employees of the Contractor. The Contractor will be held responsible for their work and shall be responsible to the City for acts and omissions including those by their respective agents and employees.

When subcontracted work is not prosecuted in a manner satisfactory to the Engineer, the Contractor shall be notified to take corrective action within a specified time. If timely correction is not made, then upon receipt by the Contractor of written instructions from the Engineer, the Subcontractor shall be removed immediately from the work and shall not be reemployed.

### **8.03 Superintendent**

The Contractor shall have on the job at all times a competent superintendent, employed by the Contractor, who can read and write in English, and shall represent the Contractor and all direction given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall employ, and provide a written letter designating a superintendent or representative who shall be present on the job site whenever work is in progress to coordinate all work with the City and neighboring property owners. A backup representative may also be provided. A joint venture shall designate only one Superintendent.

Directions and information given to the Superintendent shall be considered as having the same effect as if delivered to the Contractor and the Superintendent shall have complete authority to act on behalf of the Contractor.

City approval of the Superintendent is required prior to starting work. The City reserves the right to request an appropriately qualified replacement of the Superintendent any time during construction of the project. Contractor shall provide the Engineer with the Superintendent's telephone number, along with an after-hours emergency contact number of a responsible person who shall correct hazardous situations, should they occur, during times other than the normal working hours.

### **8.04 Character of Employees**

Only competent supervisors and workers shall be employed on the work, and, if required by the Owner, the Contractor shall discharge any person who commits trespass or is, in the opinion of the Owner, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. Such discharge shall not



be the basis of any claim for compensation or damages against the City of East Palo Alto or any of its officers, employees or agents.

### **8.05 Laws to be Observed**

The Contractor shall fully observe and comply with all State and Federal laws including those of CAL-OSHA and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall also cause all agents and employees engaged on the project to observe and comply with all such laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the City of East Palo Alto and all officers, employees, and agents thereof connected with the work against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or its employees, or subcontractors. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for the work in relation to any such law, ordinance, regulation, order or decree, whether by the Contractor or its employees, or subcontractors, the Contractor shall forthwith report the same to the Owner in writing.

- a. *Non-Discrimination* – Contractor shall abide by all federal and state laws preventing discrimination in the employment of persons upon public works and shall ensure by appropriate contract provisions that all subcontractors are similarly obligated to comply with all such laws. These laws include, but are not limited to the following California Labor Code Section 1735 which provides that “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 a violation of this chapter”. Likewise, Contractor and all of its subcontractors shall abide by the provisions of California Labor Code Section 1777.6 prohibiting discrimination in the acceptance of otherwise qualified apprentices; and California Labor Code Section 3095 which declares unlawful the discrimination in any recruitment or apprenticeship program on stated grounds. City shall be entitled to retain and withhold all penalties as authorized pursuant to California Labor code, Division 2, Part 7, Chapter 1, commencing with Section 1720 and following, in accordance with the provisions of that Chapter, and the regulations established by the Director of Industrial Relations pursuant to the statutory authority of such chapter.
- b. *Hours of Labor* – Pursuant to Labor Code, Sections 1810, eight (8) hours labor shall constitute a legal day’s work and as such, the Contractor shall not permit any worker to labor more than eight (8) hours during any one (1) calendar day or more than forty (40) hours during any one (1) calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Pursuant to Labor Code, Sections 1813, Contractor shall forfeit to the City, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of this Agreement by Contractor, or 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 or more than forty (40) hours in any one (1) calendar week in violation of the terms of this Section or in violation of the provision of any law of the State of California. Such forfeiture amounts may be deducted from the contract sum. Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each calendar day and each calendar week by each worker employed on the project, which record shall be kept open at all reasonable hours to the inspection of the City, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.
- c. *Prevailing Wage* – As identified in the Notice to Bidders, the work contemplated by this agreement is a public work subject to prevailing wages under California Labor Code, Sections 1720 et. seq. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the work is to be performed for

each craft, classification, or type of worker required to perform the work. A schedule of the most recent general prevailing per diem wage rates made available to the City will be on file at the City's principal facility office and will be made available to any interested party upon request. This prevailing wage rate schedule is provided by the City for Bidder's information only and is not guaranteed by the City to be current. Contractor is obligated to verify all appropriate prevailing wage rates and pay those rates as required. By this reference the verified current schedule of prevailing wage rates is made part of the Contract Documents. Contractor shall pay not less than the prevailing per diem wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the work. Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the specified prevailing per diem wage rates to all workers employed by such Subcontractors in the execution of the work.

Contractor shall forfeit to the City, as a penalty, no more than fifty dollars (\$50.00) for each calendar day or portion thereof for each worker that is paid less than the specified prevailing per diem wage rates for the work or craft in which the worker is employed for any portion of the work done by Contractor or any Subcontractor in violation of the provisions of the Labor Code, and in particular Sections 1770 to 1781 thereof, inclusive. Such forfeiture amounts may be deducted from the contract sum. Contractor shall also pay to any worker who was paid less than the specified prevailing per diem wage rate for the work or craft for which the worker was employed for any portion of the work, for each calendar day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

The City will not recognize any claim for additional compensation because of the payment by the Contractor for any wage rate in excess of prevailing wage rates set forth in the Agreement, including payment in excess of the prevailing wage for extra work paid by force account. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the Contractor's bid and will not, under any circumstances be considered as the basis of a claim against the City under the Agreement.

- d. *Certified Payroll Records* – Pursuant to Labor Code, Sections 1776, Contractor and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the work. All payroll records shall be certified as being true and correct by Contractor or Subcontractors keeping such records; and the payroll records shall be provided to the City no later than three weeks after closing of payroll for City-funded projects, and no later than one week for federal aid projects. Certified payroll shall also be made available for inspection upon request by the State of California Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

Each Contractor and every lower-tier Subcontractor will be required to submit certified payrolls and labor compliance documentations electronically via the software LCPTracker. Electronic submission will be a web-based system, accessed on the World Wide Web by a web browser. Each Contractor user will be given a Log-On identification and password to access the City's reporting system.

- e. *Apprentice Program* – Attention is directed to State of California Labor Code, Sections 3095, 1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, Section 200, and the applicable Sections that follow. Responsibility for compliance with these requirements lies with the Contractor. To ensure compliance and complete understanding of the law requiring apprentices, and specifically the required ratio thereunder, Contractor or Subcontractors should, where some question exists, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of the



work. In the event Contractor willfully fails to comply with this Section, it will be considered in violation of the requirements of the Contract.

Contractor and all of its subcontractors shall abide by the provisions of California Labor Code Section 1777.6 prohibiting discrimination in the acceptance of otherwise qualified apprentices; and California Labor Code Section 3095 which declares unlawful the discrimination in any recruitment or apprenticeship program on stated grounds. City shall be entitled to retain and withhold all penalties as authorized pursuant to California Labor code, Division 2, Part 7, Chapter 1, commencing with Section 1720 and following, in accordance with the provisions of that Chapter, and the regulations established by the Director of Industrial Relations pursuant to the statutory authority of such chapter.

Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Contractor or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

### **8.06 Special Permits, Licenses and Fees**

Unless otherwise stated in the Special Provisions, the Contractor shall procure all permits and licenses, pay all charges and fees, including a City business license tax, and give all notices necessary for lawful prosecution of the work. All permits, licenses, and other authorizations shall be secured in sufficient time to prevent delays to the work. The Contractor shall comply with the provisions of said permits, licenses and other authorizations.

**In the event that the** City has obtained permits, licenses, or other authorization applicable to the work in conformance with the requirements of California Environmental Quality Act (CEQA) (Public Resources Code, Sections 21000 and following), the Contractor shall comply with the provisions of these permits, licenses, and other authorizations.

For City Capital Improvement Construction Projects, the Contractor shall obtain a “No Fee” encroachment and/or building permit. Contractor shall coordinate through the Engineer and the City’s Building Division to insure that all appropriate construction inspections occur. Contractor shall be responsible to obtain all signatures required for the work.

### **8.07 Coordination and Cooperation**

Construction work by utility companies or other contractors may be needed or may be occurring simultaneously within or adjacent to the limits of work for this project. The Contractor shall coordinate and cooperate with all other contractors and utility companies throughout the duration of this project to avoid delays and minimize interference and conflicts. Cooperation will be required in the arrangement for the storage of materials, and in the detailed execution of the work. It is the Contractor’s responsibility to ascertain the nature of work by others, coordinate the work, and install, modify, and maintain traffic control as necessary to avoid interferences and delays on the construction activities. Failure of the Contractor to keep informed of the work progressing on the site and failure to give written notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with Contractor’s own work.

The City reserves the right to perform work or allow others to perform work, as necessary, within or adjacent to the limits of this project, at any time. If the Contractor or any of the Contractor’s Subcontractors or employees cause loss or damage to any separate contractor on the work, the Contractor, by agreement or arbitration will settle any claim for such loss or damage if the Contractor deems it necessary. If such separate contractor shall sue the City, on account of any loss so sustained, the City shall notify the Contractor, who shall indemnify and save harmless the City against any loss or damage arising therefrom, including the cost and expense of defending any such suit.

The Contractor's bid shall absorb all costs involved in coordinating the work with others. The Contractor will not be entitled to additional compensation from the City for damages resulting from such simultaneous, collateral and essential work.

### **8.08 Use of Premises**

The Contractor shall confine construction activities to the project limits; which shall consist of right-of-way, easements and/or property owned by the City of East Palo Alto, without exception, unless otherwise authorized in writing by the City. With prior approval of the Engineer, adjacent street right-of-way may also be utilized for day-to-day operations. Unless approved by the Engineer, no storage of materials and equipment will be allowed to remain within the right-of-way during non-working hours, on the weekends, or during holidays.

Each day, after the completion of construction operations, unless otherwise approved by the Engineer, the project limits shall be secured. All excess materials and equipment not protected by approved traffic control devices (such as k-rails) shall be relocated to a staging area or demobilized. If the area is accessible to the public, trench spoils shall be off-hauled daily and open excavations shall be protected with steel plates.

Personnel of Contractor and Subcontractors shall not occupy, live upon, or otherwise make use of the project site during any time that work is not being performed at the project site, except as otherwise provided for in the Contract Documents for issues such as site security.

### **8.09 Construction Staging and Field Office**

If additional space beyond the construction limits is necessary for staging, the Contractor shall make special arrangements with neighboring property owner(s) to secure a staging area for a field office and/or material and equipment storage at the Contractor's own cost and initiative. The staging area must be fenced, with screening, and shall be operated in a manner that minimizes the inconvenience to neighbors.

Areas used to store materials, supplies or equipment overnight shall be defined as a staging area. City streets shall not be used as staging areas unless specifically authorized in writing by the City Representative. Vacant and/or city controlled land may be used as staging area only with written permission of the City Representative. Privately owned lots shall not be used as staging areas without specific written consent of the property owner. A copy of such private property owner consent shall be submitted to the City Representative prior to use of private property as a staging area. No equipment shall be left on residential streets on Saturday, Sunday or holidays unless work is active on the day.

The Contractor is encouraged to negotiate side agreements with the property owner of such sites prior to submitting bids. In addition to approval from the property owner, the Contractor may also need to secure a Use Permit from the City's Planning Division.

### **8.10 Site Security**

Contractor shall be responsible for the care and custody of work and the site, including all necessary security provisions, on a 24-hour per day basis throughout the entire term of the Agreement. The Contractor shall provide and maintain storage facilities and employ such measures as will preserve the specified quality and fitness of materials to be used in the work.

### **8.11 Construction Water**

Construction water is available at cost to the Contractor. The Contractor is responsible for obtaining the required hydrant construction meter from the Water Department located at 2415 University Ave, second floor, in the City of East Palo Alto.

The Water Department shall equip the construction meter with a Back Flow Preventer (BFP) with a single or double check valve. The Contractor shall bare full responsibility of the water meter and any apparatuses attached once issued by the Water Department. The Contractor shall be responsible in maintaining all *hydrant valve stems* using the proper *hydrant wrench* and maintained *correct placement* of

the meter to the hydrant at all time. Contractor shall use proper treatment methods of cleaning all attached hoses prior of connection to the (BFP).

### **8.12 Project Site Maintenance**

- a. *Disposal of Material* – Unless otherwise shown on the plans or specified herein, all excess materials and materials removed from existing improvements shall become the property of, and be disposed by the Contractor. The Contractor shall be responsible for all costs associated with disposing all excess materials in a safe and legal manner. No material shall be placed on private or public property without prior approval from the City and the property owner. The Contractor shall not allow any refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed upon paved streets, into manholes or into the City's storm drain system.

Contractor shall establish a system for daily collection and disposal of waste materials from construction areas and elsewhere on the site. Contractor shall handle waste materials that are hazardous, dangerous, or unsanitary separately from inert waste by containerizing appropriately. Burning or burying of waste materials on site will not be permitted.

All materials removed from the existing improvements identified in the project plans to be salvaged, shall be delivered to the City Corporation Yard at 221 Commercial Street or at any other site designated by the Engineer within the City, at no additional cost.

- b. *Cleanup and Dust Control* – At all times during construction, including weekends and holidays, and throughout all phases of construction, including work suspensions and until final acceptance of the project, the Contractor shall keep the work site clean and free from rubbish, debris, and prevent the formation of an airborne dust nuisance.

Materials and equipment shall be removed from the site as soon as they are no longer necessary. Upon completion of the work and before final inspection, the entire site shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs shall be absorbed in the Contractor's bid.

The Contractor shall abate dust nuisance by cleaning, sweeping, and sprinkling with water, those excavated areas of dirt or other materials which are prone to causing dust, within both the project site and the storage or staging area. If required or directed by the Engineer, the Contractor shall provide an approved water truck of large capacity with spraying capability.

Contractor shall perform thorough daily street sweeping as deemed necessary by the City Representative. The contractor shall have on-site or readily available, street sweeping equipment capable of performing sweeping with mechanical brooms and with either regenerative air vacuum filter technology. Mechanical brooms shall be used for wet soil, or soils that are ground into the texture of the pavement. Regenerative air or vacuum filter equipment shall be used for dry soils to minimize dust disturbance. If in the opinion of the City Representative, sweeping is not performed in an adequate manner, the City reserves the right to perform the necessary work with City or other forces and back-charge the contractor for the cost.

The Contractor shall be required to apply water for dust control immediately during construction efforts and within one (1) hour after notification by the Engineer that an airborne nuisance exists. If dust control is not adequate in the opinion of the Engineer, the Engineer will have this work done by others and will deduct such cost from the total contract price.

All hauling trucks or other construction vehicles leaving the site shall be cleaned of mud or dirt clinging to exterior body surfaces or wheel rims before traveling on City streets outside the work limits. All trucks coming to or leaving the site with materials or loose debris shall be loaded in a manner, which will prevent the dropping of materials or debris on City streets. Spillage resulting

from hauling operations along or across any public traveled way shall be removed immediately at the Contractor's expense.

When construction operations cause dirt to be deposited on public streets, the Contractor shall immediately remove such material. Streets shall be cleaned by street sweeping, rather than flushing, so as to prevent mud from entering the storm drain system.

Excess excavated material shall be removed from the site immediately. Sufficient material may remain for use as backfill if permitted by the specifications. Forms and form lumber shall be removed from the site as soon as practicable after stripping.

Failure of the Contractor to comply with the Engineer's cleanup orders may result in an order to suspend work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.

- c. *Air Pollution Control* – The Contractor shall not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.
- d. *Noise Control* – The Contractor shall make every reasonable effort to control noise generated as a result of construction to the satisfaction of the Engineer. Use of an air compressor, jackhammer or other loud, vibrating sound generating device shall be limited to operations between the hours of 8:00 a.m. and 4:00 p.m. unless otherwise authorized by the Engineer.
- e. *Pest Control* – At the time of acceptance, structures entirely constructed under the contract shall be free of rodents, insects, vermin and pests. Necessary extermination work shall be arranged and paid for by the Contractor as part of the contract work within the contract time and shall be performed by a licensed exterminator in accordance with requirements of governing authorities. The Contractor may be liable for injury to persons or property and responsible for the elimination of offensive odors resulting from extermination operations.
- f. *Sanitation* – The Contractor shall provide and maintain enclosed toilets and hand washing stations for the use of employees engaged in the work. These accommodations shall be maintained in a neat and sanitary condition. They shall also comply with all applicable laws, ordinances and regulations pertaining to the public health and sanitation of dwellings and camps.
- g. *Wastewater* – Wastewater systems shall not be interrupted. Should the Contractor disrupt existing sewer facilities, the Contractor shall immediately notify the Engineer, and the Contractor shall establish a plan, subject to the approval of the City, to convey the sewage in closed conduits and disposed of it back into the sanitary sewer system. Sewage shall not be permitted to flow in trenches or be covered by backfill.
- h. *Temporary Light, Power and Water* – The Contractor shall furnish, install, maintain, and remove all temporary light, power, and water, including piping, wiring, lamps, and other equipment, necessary for the work at the Contractor's own expense. The Contractor shall not draw water from any City water source, except to extinguish a fire, without first obtaining a hydrant meter from the City. Temporary wiring and electrical facilities shall be in accordance with applicable provisions of Electrical Safety Orders of the State of California. The Contractor shall provide, maintain, and remove upon completion of work, temporary utilities and construction required for performance of the work, and safety of personnel.

For permanent utility connections, the Contractor shall coordinate with the proper agencies, any utility connections required. Contractor shall be responsible for distribution of power or water to points of use.

- i. *Storm Water Pollution Control* – Storm Water Pollution Control work shall consist of following

Best Management Practices (BMP) for storm water pollution prevention, submitting a Storm Water Pollution Prevention Plan (SWPPP) in compliance with all NPDES requirements, and constructing those facilities which may be required to provide prevention, control, and abatement of water pollution. SWPPP shall address how the Contractor will prevent materials specified above from being rinsed or washed into the storm drain system and which BMPs will be implemented for preventing sediment and pollutant discharges into the stormwater system.

In compliance with State and Federal regulations on construction storm water management and non-point source pollution control, no pollutants will be allowed to enter the storm drainage system. The Contractor shall be responsible for containing and removing any waste from the Contractor's construction operations using the appropriate BMP. The Contractor shall be responsible for cleaning catch basins of solid or liquid waste materials originating from the Contractor's operation before this material migrates further into the storm drain system. Violation of this provision shall cause the City to issue a stop-work notice and take necessary action to require the Contractor to correct and comply with regulations. All costs related to the stop-work action and corrective work to come into compliance shall be fully borne by the Contractor.

All construction efforts shall be conducted in a manner which prevents the release of hazardous material or hazardous waste into the soil or groundwater, and minimizes the discharge of pollutants into the storm drain system. The Contractor shall comply with guidelines to prevent pollutants from entering the public storm drain system that would otherwise allow pollutants to flow into creeks and then directly into San Francisco Bay.

All fines or enforcement action by regulatory agencies for violations of permits or NPDES requirements shall be the full responsibility of the Contractor.

The Contractor is prohibited from rinsing or washing any of the following materials into the streets, shoulder areas, inlets, catch basins, or gutters:

- |                                     |  |
|-------------------------------------|--|
| — Concrete                          | — Paints (water and oil based) and paint chips |
| — Grout                             | — Gasoline                                     |
| — Mortar                            | — Diesel Fuel                                  |
| — Drywall compound                  | — Oil  |
| — Cement and stucco                 | — Sawdust                                      |
| — Solvents and adhesives            | — Asphalt and concrete sawcut slurry           |
| — Thinners                          | — Fertilizer or pesticides                     |
| — Sediment/dirt                     | — Sand blast grit and material                 |
| — Cleared vegetation/plant material | — Other construction materials or wastes       |

In addition, the Contractor shall implement appropriate measures to reduce sediment and pollutants in storm water discharges from construction sites on jobs within the City of East Palo Alto. Information on Best Management Practices (BMPs) is available from a variety of sources, including (but not limited to) the following references:

[Blueprint for a Clean Bay - Best Management Practices for the Construction Industry to prevent Stormwater Pollution from Construction-Related Activities](http://EastPaloAlto.ca.gov/Portals/0/EastPaloAlto/CDD/Permits/Building/BlueprintforaCleanBay.pdf); City of East Palo Alto latest revision at <http://EastPaloAlto.ca.gov/Portals/0/EastPaloAlto/CDD/Permits/Building/BlueprintforaCleanBay.pdf>

[California State Best Management Practices \(BMP\) Handbooks \(Construction, New Development and Redevelopment, Municipal, and Industrial\) Revised](#). California Storm Water Quality Association, 2003.

[Erosion and Sediment Control Field Manual](#), Third Edition. California Regional Water Quality Control Board San Francisco Bay Region, 1999.

The Contractor shall refer to the Technical Specifications for any additional requirements related to discharges to storm sewers. The City will monitor the construction site to insure that the Contractor complies with all contract requirements. The Contractor shall submit for review a Storm Water Pollution Prevention Plan that addresses:

1. How the Contractor will prevent materials specified above from being rinsed or washed into the storm drain system, and
2. Which BMPs will be implemented for preventing sediment and pollutant discharges into stormwater discharges.

The Contractor shall not proceed with any site work which potentially creates any material that could enter the storm drain system or Calabazas Creek, until the accepted Storm Water Pollution Prevention Plan is in place.

The first progress payment will not be made until the Storm Water Pollution Prevention Plan has been submitted and favorably reviewed.

### **8.13 Climate Preservation**

Idling times will be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]), or less. Clear signage will be provided at all access points to remind construction workers of idling restrictions.

### **8.14 Preservation of Property**

The Contractor shall be responsible for the protection of public and private property adjacent to the work.

Due care shall be exercised to avoid damage to existing roadway improvements and facilities, adjacent property, roadside trees, lawn and shrubbery not designated for removal, pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water laterals, and any other improvements or facilities within or outside the limits of construction. As ordered and approved by the Engineer, the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition as good as when the Contractor entered upon the work, or as good as required by the Contract Documents.

Existing striping damaged during construction within and adjacent to the project site shall be replaced in kind. Partially damaged striping (such as what might occur trenching through a pavement legend), shall be replaced in their entirety.

Any survey monuments that are damaged or removed as part of the construction shall be replaced by the Contractor and a Record of Survey, as required by State law, shall be filed by a licensed Land Surveyor at the Contractor's expense, or as specified above.

The fact that any such improvement or facility is not shown upon the plans shall not relieve the Contractor's responsibility under this Section. It shall be the Contractor's responsibility to ascertain the existence of any underground improvements or facilities indicated on the plans, indicated by locating services, or as evidenced by facilities visible in the field.

### **8.15 Protection of Traffic Signal Facilities**

The Contractor shall give at least 72 hours advance notice to the Engineer before commencing any street work (such as pavement grinding or trenching) that may potentially damage any traffic signal detection loop wires or any other signal facility. This requirement is in addition to any Underground Services Alert notifications. The City will then mark the underground traffic signal facilities.



The Contractor shall not proceed with any grinding, trenching or other underground work until it has been verified with the City Representative that signal facilities have been marked. The Contractor shall be responsible for all damage to traffic signal facilities arising from failure to properly comply with these provisions.

In the event that the Contractor's construction activities cause any failure of a traffic facility, it shall be repaired and be made fully operable within 24 hours of the damage occurring. In the event that such repair is not undertaken within this time limit, the City may repair the facility at the Contractor's expense. In the event that such repair is not undertaken within this time limit, the City will repair the facility and deduct the cost from monies due to the Contractor. The amount deducted will include actual expenses incurred.

### **8.16 Restoration of Adjacent and Existing Improvements**

Contractor shall do all cutting, fitting, or patching of the work required to make all parts of the work come together properly with existing and adjacent conditions.

Unless otherwise provided, the Contractor shall repair or replace all existing improvements (e.g., curbs, sidewalks, driveways, fences, signs, utilities, street surfaces, structures, etc.) damaged or removed as a result of the Contractor's operations. Repairs and replacements shall be at least equal to existing improvements, and shall match in terms of condition, finish and dimension.

All Underground Services Alert (USA) markings on concrete or asphaltic pavement or other structures shall be removed when they are no longer required. Acceptable means of removal include sand blasting or high pressure washing.

All traffic signs and street signs within the limit of work necessarily removed during the various phases of operations shall be temporarily reset by the Contractor at or near the original location upon completion of each phase of construction operations. Prior to removal of all traffic control signs, the Contractor shall take photographs of the site which show the existing location of these signs so that upon completion the photographs will aid in resetting the signs at or near their original location. Traffic control signs and street signs will be replaced upon completion of the work and the cost of removal and replacement will be included in various bid items and no separate payment will be made.

Rural type mail boxes shall be maintained by the Contractor in a manner satisfactory to the property owner and postal service, and the Contractor shall relocate the same as soon as possible to a permanent location in accordance with postal regulations and in a location acceptable to the property owner.

Any object to be removed and reused at other locations shall be removed with due care and delivered or stored at the project's construction storage area, or if approved by the Engineer, at any other site designated by the Engineer within the City. Such objects may consist of street light poles, signal mast arms and other objects directed by the Engineer. Items not approved by the Engineer for reuse purposes, and without salvage value, shall become the property of the Contractor, to be disposed of at Contractor expense, in an acceptable manner.

### **8.17 Archeological Remains**

If archeological remains are uncovered during excavation, earthwork within 100 feet of these materials will be stopped until a professional archeologist registered by the Society for California Archeology (SCA) and/or the Society of Professional Archeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation measures.

### **8.18 Access to Private Property**

The Contractor shall schedule and perform operations so as to minimize disruption of access to private property. Prior to blocking access to any private driveway or parking lot entrance, the Contractor shall notify the resident, business owner or tenant of pending closure and allow residents to remove vehicles. During non-working hours no driveway, house or parking lot shall be denied access to a public roadway.

The Contractor shall coordinate with the adjacent property owners and businesses and maintain vehicle and pedestrian access to their properties at all times. Temporary access ramps, fencing, or other measures shall be provided as needed.

### **8.19 Notification and Relations with Property Owners**

A two-week and a **72-hour** prior to construction public notification is required. Two weeks prior to beginning any work on the project, the Contractor shall deliver written notice to all adjoining residents, businesses, tenants and other applicable parties. Notice shall be given for general construction activity as well as specific activities that will inconvenience residents/property owners/tenants or, in any way, affect their operations or access to their property. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration, and the name, address, and an approved emergency contact number for the public to reference during the construction. A follow up notice shall be distributed 72-hours prior to the construction activity. Copies of all notices shall be submitted to the Engineer for review and approval prior to public distribution.

All costs involved in providing notification and access shall be included in the amount bid for the various bid items and no additional compensation will be allowed.

### **8.20 Traffic Control and Public Convenience**

The Contractor shall provide for safe movement of all vehicular, bicycle and pedestrian traffic through and around the construction operations with as little inconvenience and delay as possible. The Contractor shall have no amount of work under construction other than what the Contractor can properly prosecute with due regard to the rights and convenience of the public.

Proper conveyance of vehicular traffic and pedestrians through the work area depends upon navigating under unexpected situations. The means of clarifying such conditions to the public include the Contractor's use of signs, flagmen, pavement markings, barricades, lights, cones and delineators. No one standard sequence of signs or control devices will suit all conditions which may result from construction operations. Even for the same work, the conditions may vary from hour to hour, requiring adjustment and revisions of the traffic control in effect. The traffic control requirements specified herein are therefore intended to establish general principles to be observed in the control and regulation of traffic through and around the construction operations anticipated for this project. The requirements set forth in this Section represent the minimum traffic control requirements imposed and the Contractor shall be solely responsible for providing the full extent of traffic control measures that are necessary. Only individuals trained and certified in the principles of implementing traffic control and/or traffic control flagging shall be assigned that responsibility at the work site.

The Contractor shall maintain sufficient safeguards against occurrence of accidents, injuries, or damage to any person or property and shall be responsible for same if such occurs. The Contractor shall also maintain adequate protection of its work and materials from destruction and loss and shall protect the City's property from damage arising in connection with this contract, and shall make good any such damage, destruction or loss.

- a. *Traffic Control Plan* – The Contractor shall submit a Traffic Control Plan to clearly describe proposed traffic control measures. The plan shall be generally in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).
- b. *Traffic Control Devices* - Traffic control devices shall be provided in sufficient quantities and types as required to provide safe and adequate traffic control. During hours of darkness, approved lights and/or flares shall be included, in proper working order, to illuminate signs and hazards and alert approaching traffic. Barricades shall be furnished and maintained along all open trenches in contact with traffic. No work may begin on any day or at any time before traffic control devices have been placed, test driven and, if required, adjusted and revised. All traffic control devices shall be placed in accordance with the Manual of Uniform Traffic Control Devices and the



Contractor's favorably reviewed traffic control plans. Locations of devices shall be adjusted to suit the conditions and circumstances of each detour situation. In all cases, signs shall be placed to most effectively convey their messages to approaching traffic.

The Contractor shall maintain all traffic control devices, at proper locations and in proper working order, at all times during construction operations and whenever a hazard resulting from Contractor's operations exists. The Contractor shall adjust and revise traffic control devices, placement, etc., to suit changing conditions around construction operations. Traffic control devices shall remain in place at all times, as required to alert approaching traffic of upcoming hazards. After hazards have been removed, all traffic control devices shall be removed. Temporary signs shall be removed or their messages covered.

Daily traffic control measures shall continue until cleanup activities have been satisfactorily completed and all of the Contractor's equipment has been removed from the traveled way.

- c. *Traffic Control Detours* - The Contractor shall direct, divert and detour traffic through, around and adjacent to construction operations in accordance with the traffic control plans specified in the Contract Documents or in accordance with the Contractor's favorably reviewed traffic control plans.
1. *Field Review of Detours* - Immediately after traffic control devices have been placed, the detour shall be test driven by the Engineer and the Contractor's Superintendent. The test drive shall include approaches to the detour from each possible direction, and traverse the full length of each detour route. The Contractor shall adjust and revise all traffic control devices as determined to be required by the test drive and the test drive shall be repeated, if determined necessary by the Engineer. The Contractor shall provide additional traffic control devices as required to maintain the flow of traffic throughout construction operation.
  2. *Diverting Bicycle and Pedestrian Traffic* – Whenever construction operations obstruct the flow of bicycle and pedestrian traffic or present a hazard to bicycles and pedestrians, the Contractor shall take appropriate action to protect and separate bicycles and pedestrians from the work area. Such action may include placement of barricades between bicycles and pedestrians and the work areas, placement of warning signs, and provisions utilizing personnel as required to protect and maintain access for bicycles and pedestrians as conditions warrant.
  3. *Diverting Vehicular Traffic* - Whenever construction operations obstruct the flow of vehicular traffic or present a hazard to vehicles operating in the vicinity of construction operations, the Contractor shall take appropriate action to warn, detour and otherwise protect approaching drivers and vehicles.
  4. *Flagmen* - The Contractor shall employ flagmen as required for each specific detour and at all locations where barricades and warning signs cannot control the movement of traffic. A warning sign shall be placed ahead of the flagman reading: "Flagman Ahead." The distance between the sign and the flagman should be based on the average traffic speed, allowing approximately 50 feet for each 10 miles per hour. During hours of darkness, flagman stations shall be illuminated such that the flagman will be clearly visible to approaching traffic. Lights for illuminating the flagman station shall receive favorable review by the Engineer. The flagman shall wear a red or orange warning garment when flagging. Flagmen shall be provided with approved red flags or STOP/SLOW hand paddles, and two-way radios for communication. When flagging during hours of darkness, the flagman shall signal with a red light or flare and shall have a belt and suspender harness fitted with reflectors or made from reflectorized cloth on the outside of the garment, unless the garment is well reflectorized in one of these ways.

5. Notice to Agencies - The Contractor shall notify the Engineer and all agencies having jurisdiction over the work, in writing, at least seventy two (72) hours, excluding holidays and weekends, prior to instituting any lane closure or detour. At the end of each workday, the Contractor shall inform the Engineer, Police Department and Fire Departments of the status of all detours, lane restrictions, or road closures. The Contractor shall cooperate and coordinate with the various parties involved in the collection and removal of trash and garbage, the transit providers, the U.S. Postal Service, and others, as necessary, in order to maintain existing schedules and services.
  6. Emergency Vehicle Access Through Detours - During all detours and/or street closures the Contractor shall provide for the movement of emergency vehicles through the work area. It is essential that the Contractor's work and equipment does not impede emergency access.
  7. Night Detours – Except for the detour shown on the project plans, the Contractor shall not be permitted to maintain any lane closure or road closure during non-working hours without first obtaining written approval from the Engineer. During non-working hours the Contractor shall restore travel lanes to their original alignment and configuration by means of placing temporary asphalt pavement or bridging with steel plates. The Contractor shall place "ROUGH ROAD" signs conforming to the Manual of Uniform Traffic Control Devices at uneven temporary pavement or bridging locations. See General Provisions, Section 9.18 (b), "Trench Safety Requirements".
  8. Temporary Traffic Lanes – Temporary traffic lanes shall be at least 10 feet wide, or 11 feet wide around curves. Provide an additional two (2) feet of clearance from curbs. The length of temporary lanes should be limited to the area under construction and the distance necessary to divert traffic.
- d. *Lane Closure Restrictions* – See Special Provisions for project specific restrictions.
- e. *Parking Restrictions* - The Contractor shall post approved "No Parking" signs at all locations necessary to establish work areas and detour traffic. Signs shall read: "NO PARKING - CONSTRUCTION TOW - AWAY ZONE," show the actual day and hours of parking restriction and indicate the telephone number of the City's Police Department or agency having jurisdiction. Signs shall be placed at least forty hours (48) hours in advance of the restriction. The Engineer shall approve the location and duration of no parking limits and verify their placement. "No Parking" signs shall be removed when no work is under construction and must be reposted forty eight (48) hours before the resumption of construction activities.

For any violation of "No Parking" signs by motorists, the Contractor shall contact and coordinate directly with the City's Police Department for removal of vehicles in accordance with the California Vehicle Code. The Contractor shall also coordinate with the Police Department directly for enforcement and towing of parked vehicles.

### **8.21 Safety**

In accordance with generally accepted construction practices and State Law, the Contractor shall be solely and completely responsible for conditions on 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, and shall encompass all persons, including City Staff and its Consultants.

The services of the Owner in conducting inspection or construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing, shoring or scaffolding, or safety measures, in, on, or near the construction site.

OSHA approved safety vests and hardhats shall be worn by the Contractor, all subcontractors and other personnel when working or present on the site.

The Contractor shall carefully instruct all personnel working in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

All work and materials shall be in strict accordance with all applicable, City, County, State and Federal Rules, Regulations, and Codes, and attention is drawn to the requirements of CAL/OSHA. The Contractor shall be solely responsible for compliance with all City, County and State blasting requirements and for any damages caused by its operations. The Contractor shall be responsible for obtaining permits required by Section 6500 of the State Labor Code and Section 341 of Title 8 of the California Code of Regulations.

In accordance with Section 6705 of the State Labor Code, the Contractor shall submit to the Owner specific plans to show details of provisions for worker protection from caving ground. This in no way relieves the Contractor from the requirement of maintaining safety in all operations it or its subcontractor's performance. The detailed plan showing design of shoring, bracing, sloping or other provisions shall be prepared by a Civil or Structural Engineer registered in the State of California as required. Acceptance by the Owner only constitutes acknowledgment of the submission and does not constitute review or acceptance of the designs, design assumptions or criteria, completeness of submissions, applicability to areas of intended use, nor implementation of the plans, which are solely the responsibility of the Contractor and its registered engineer.

Notwithstanding any classifications relative to the Tunnel Safety Orders, work within confined spaces on this project is subject to the definitions and applicable provisions of Title 8, California Code of Regulations, Section 5156 et seq.

The Contractor shall so perform its work as not to expose personnel to, or to discharge into the atmosphere from any source whatever, smoke, dust, asbestos, toxic chemicals or other air contaminants in violation of the laws, rules, and regulations of the regulatory agencies having jurisdiction. All work involving exposure to hazardous materials shall be performed with protection of personnel in compliance with all applicable regulations and safety requirements.

Nothing in these Specifications is to be construed to permit work not conforming to governing codes. When Contract Documents differ from governing codes, the Contractor shall furnish and install the higher standards called for without extra charge.

### **8.22 Patent Fees or Royalties**

The patent fees or royalties on any patented article or process which may be furnished or used in the work shall be absorbed in the Contractor's bid. The Contractor shall indemnify, defend and hold the City harmless from any legal action that may be brought for infringement of patents.

### **8.23 Advertising**

The names of the Contractor or Subcontractors, with their addresses and the designation of their particular specialties, may be displayed at the job site on removable signs only if written approval is received from the Engineer. Commercial advertising material shall not be attached to, or painted on the surfaces of, any buildings, fences, canopies, or barricades.

### **8.24 Antitrust Claims**

Attention is directed to Public Contract Code, Section 7103.5 which provides: "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. Sec 15) or 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, services, or materials pursuant to the public works contract or subcontract. The assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties".

### **8.25 Audit and Examination of Records**

The City and entities and agencies designated by the City, shall have access to, and the right to audit and examine at no additional cost, all of the Contractor's project related data including but not limited to, books, estimates, records, contracts, bid cost data, Subcontractor and supplier job cost data, change orders, correspondence, instructions, drawings, receipts, vouchers, purchase orders, notes, computations, daily logs, and memoranda relating to the work. Pursuant to Government Code, Section 8546.7, the Contractor shall preserve all such records and will be subject to examination and audit by the State Auditor, at the request of the City, for a period of three (3) years after final payment under the Agreement.

### **8.26 Web-Based Construction Document Management**

The Contractor shall utilize e-Builder for submission of data and documents throughout the duration of the Contract, unless specified otherwise in the Contract Documents. e-Builder is a web-based construction management application hosted by e-Builder. It shall be the primary means of project information submission and management or as otherwise agreed upon with the Engineer. The Engineer will establish the Contractor's access to e-Builder by providing one license to Contractor personnel at City's cost. The contractor and users will be required to set up their computers/systems to use e-Builder in accordance to the e-Builder User Training Guider-2015. The City will provide one classroom training or a web-based seminar. A training session is 1 - 2 hours.

e-Builder is a web-based environment and therefore it is subject to the inherent speed and connectivity limitations of the Internet. The Contractor is responsible for its own connectivity to the Internet. e-Builder response time is dependent on the Contractor's equipment, including processor speed, Internet access speed, etc. and current traffic on the Internet. The City will not be liable for any delays associated from the usage of e-Builder including, but not limited to: slow response time, down time periods, connectivity problems, or loss of information. The Contractor shall ensure connectivity to the e-Builder system whether at the home office or job site. Under no circumstances will usage of e-Builder be grounds for a time extension or cost adjustment to the Contract.

Data entered in a collaborative mode (entered with the intent to share as determined by permissions and workflows within the e-Builder system) by the Engineer and the Contractor will be jointly owned. The Contractor is responsible for managing, tracking, and documenting the Work to comply with the requirements of the Contract Documents. The City's acceptance via automated system notifications or audit logs extends only to the face value of the submitted documentation and does not constitute validation of the Contractor's submitted information.

While regular email will still be used for communication, e-Builder shall be utilized as much as possible in connection with all document and information management required by these Contract Documents. Contractor shall be responsible for scanning or otherwise converting to electronic format all project submittals and Contractor correspondence, drawings, sketches, etc., and uploading them to the e-Builder web site and shall be responsible for the validity of its information placed in e-Builder. The Contractor shall utilize the existing forms and processes in e-Builder to the maximum extent possible. If a required form does not exist in e-Builder, the Contractor shall include a form of its own or one provided by the Engineer (if available) as an attachment to a submittal or process. Documents and information to be submitted electronically include, but are not limited to:

1. Submittals using the Submittal Module
2. Requests for Information using the RFI process
3. Change Order Requests using RFQ and CCO processes
4. Progress payments requests using Pay Application process
5. Construction Closeout process
6. Compliance documentation (test reports, QA/QC reports, certifications)
7. Schedules and associated updates

The term "Copy" or "Copies" shall refer to electronic copies unless a hard copy is specified. Where a hard copy is specified, both electronic and paper versions shall be submitted.

Related Sections: Article 3.13, Submittals, General Provisions

## **SECTION 9 – MEASUREMENT AND PAYMENT**

### **9.01 Measurement of Quantities for Unit Price Work**

Materials and items of work which are to be paid for on the basis of measurement shall be measured in accordance with the methods stipulated in the particular sections of the Contract Documents involved.

Unless otherwise specified, quantities of work shall be determined from measurements or dimensions in the horizontal planes. Stationing shall be along the street centerline, lengths of sanitary sewers, storm drains and water lines shall be measured as the horizontal distances from center to center of structures, rounded to the nearest foot, and lengths of all return radii and curb data shall be measured along the face of curb.

Unless otherwise provided in the Contract Documents, volumetric quantities shall be the product of the mean area of vertical or horizontal sections and the intervening horizontal or vertical dimensions. Measurements shall be in accordance with U.S. Standard Measures. A pound is an avoirdupois pound. A ton is 2,000 pounds avoirdupois. The unit of liquid measure is the U.S. gallon.

When payment is to be made on the basis of weight, the weighing shall be done on certified platform scales or, when approved by the Engineer, on a completely automated weighing and recording system. The Contractor shall furnish the Engineer with duplicate licensed weighmaster's certificates showing the actual net weights. The City will accept the certificates as evidence of the weights delivered.

### **9.02 Bid Items**

Should any bid item be eliminated in its entirety, payment will be made to the Contractor for actual costs incurred, in connection with such eliminated contract work, and for costs incurred prior to the date of the Engineer's written notification eliminating such work. The actual costs to be paid to the Contractor shall be computed in the same manner as if the work were to be paid on a force account basis. No compensation will be made to the Contractor, in any case, for loss of anticipated profits. Increased or decreased scope involving a change order will be paid as stipulated in the change order.

The estimated value of work performed, for lump sum bids or lump sum bid items will be determined from the Schedule of Values. **The schedule of values shall be required by the Contractor for all lump sum bid items that breaks down the work into individual quantifiable components, plus quantities and unit prices of those components that when summed up equates to the lump sum amount of the bid item. Change order pricing for addition or deletion of those components shall be based on the lump sum breakdown contained in the Schedule of Values.** No progress payment will be made until a Schedule of Values has been submitted by the Contractor and accepted by the City. Progress payments for unit price bid items will be based on the estimated quantity of work performed during the month.

Elements of work shall be separated into groupings appropriate for the project. The Technical Specifications may be used as a guide for establishing these groupings. Within each grouping, work shall be itemized by readily measurable quantities of work complete in place. The Schedule of Values shall be broken down on the basis of each lump sum bid item. Move-on costs, bond and insurance costs, and submittal preparation costs can be included in the schedule of values under a separate mobilization line item. This line item shall not exceed 5% of the contract's value. Overhead and profit shall not be allowed as line items but shall be prorated over other items of work. In the event that the Schedule of Values is not accepted by the City, another Schedule of Values shall be submitted that is acceptable to the City. The Schedule of Values shall be submitted by the Contractor within 14 days of Notice to Proceed.

The estimated value of work performed, for lump sum bids or lump sum bid items will be determined from the schedule of values, to be prepared by the Contractor and presented at the preconstruction meeting. Elements of work on the schedule of values shall be separated into groupings appropriate for the project. The Technical Specifications may be used as a guide for establishing these groupings. Move-in costs, bond and insurance costs, and submittal preparation costs can be included in the schedule of values



under a separate mobilization line item. This line item shall not exceed 5% of the contract's value. Overhead and profit shall not be allowed as a line item, but shall be prorated over other items of work.

### **9.03 Bid Quantities**

Payments to the Contractor will be made only for the actual quantities of contract items constructed in accordance with the plans and specifications. Payment will not be made for materials wasted or disposed of in a manner not called for under the contract. This includes rejected material not unloaded from vehicles, material rejected after it has been placed and material placed outside of the plan lines. Unless otherwise provided, no payment will be made for materials delivered to the site but not incorporated in the work. Such quantities will not be included in the final pay quantities. No compensation will be allowed for the disposal of rejected or excess material.

When the estimated quantity for a specific portion of work is designated on the Bid Schedule as a "Final Pay Quantity", the estimated quantity specified shall be the final quantity for which payment for such specified portion of the work will be made, regardless of the actual quantity constructed, unless the dimensions of said portions of the work shown on the plans are revised by the Engineer. If such dimensions are revised and such revisions result in an increase or decrease in the quantity of such work, the final quantity for payment will be revised by the amount represented by the change. The estimated quantity for any portion of the work designated as a Final Pay Quantity shall be considered as approximate only and no guarantee is made that the quantity, which can be determined by computations, based upon the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantities based upon computations do not equal the estimated quantities. Final pay quantities will be designated on the Bid Schedule with the letter (F) and shall only apply to the corresponding portions of work specifically designated on the plans. Any portion of work not designated as a final pay quantity will be measured and paid for as specified under other provisions of the Contract Documents.

### **9.04 Progress Payments**

On or about the 25<sup>th</sup> day of each month may be designated as the date which would terminate each working month for the purpose of making progress payments. In the event that this estimate cannot be mutually agreed, the City will determine the value for progress payment purposes.

The Contractor's request for a progress payment shall be submitted via e-Builder. Request for Progress Payment form (PAS Form 051) enclosed in Appendix A of these General Provisions shall be attached to the process. The Request for Progress Payment form shall be complete and properly executed by the contractor, and have, as attachments, the items listed on the form.

The Contractor shall, on the date established, prepare and submit a progress estimate to the City for work accomplished during the previous working month, based on the various contract bid items and the unit bid prices. Invoices shall include amounts previously paid, itemized retention and any deductions or additions authorized by change order. Consultation with the Engineer may be necessary to determine the amount of work accomplished.

The first progress payment will not be made until the following submittals **and documents** have been provided and accepted: list and schedule of submittals, baseline construction schedule, schedule of values, SWPPP, and **certified payroll submitted plus uploaded onto the DIR online payroll system covering the work pay period**. Subsequent progress payment requests will not be accepted unless accompanied by the progress payment cover letter, an updated baseline or revised schedule, a certification that the record drawings have been updated as of the date of the invoice, **and certified payroll covering the work pay period**.

Upon receipt of a progress payment request, the City shall, within seven (7) days, determine if the request is proper, and if disputed the City will return the progress payment to the Contractor along with a written document setting forth the progress payment request's shortcomings. Following receipt of an

undisputed and properly submitted progress payment request, the City shall make payment within thirty (30) days.

Contractor may request partial payment for materials delivered to the site but not yet incorporated into the work (materials on hand). To receive consideration for payment of materials on hand, the Contractor shall provide the Engineer with a list of such materials at least five (5) working days prior to submitting the monthly estimate of amount earned for work completed. At the Engineer's sole discretion, up to seventy-

five percent (75%) of the estimated value of materials on hand may be considered for payment, subject to the following:

- a. Only materials which have received favorable review of shop drawings will qualify.
- b. Eligible materials must be delivered and properly stored, protected, and maintained in a manner favorably reviewed by the Engineer, at the job site or at a bonded warehouse.
- c. The Contractor's actual net cost for the materials must be supported by paid invoices to suppliers or other documentation requested by the Engineer.
- d. Materials delivered to the site less than thirty (30) days prior to their scheduled incorporation in the work shall not qualify.
- e. Partial payments for materials on hand shall not be deemed to be final payment for the material nor relieve the Contractor's obligations under the Contract.
- f. Partial payments for materials on hand shall be subject to retention.
- g. City reserves and shall have the right to withhold payment for any equipment and/or specifically fabricated materials that, in the sole judgment of City, is not adequately and properly protected against weather and/or damage, prior to or following incorporation into the Work.

From each progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder of the amount due, less the amount of all previous payment will be paid to the Contractor provided all work invoiced has been completed and approved by the Engineer.

The Engineer may withhold or nullify, the whole or any part of any payment to such extent as may be necessary to protect the City from loss on account of any of the following:

- a. Defective or vandalized work not remedied,
- b. Damage to the City or another Contractor,
- c. Stop notices, or failure of the Contractor to make payments properly to subcontractors or laborers or suppliers, in which case 125% of the stop notice amount shall be withheld until a release form is received,
- d. Failure of Contractor to maintain, update and submit record documents, schedules or other submittals as required by the Contract Documents,
- e. Any other failure of Contractor to perform its obligations under the Contract Documents.

The Contractor may elect to receive one hundred percent (100%) of payments due under the contract from time to time, without retention of any portion of the payment by the City, by depositing and maintaining securities of a value equivalent to the retention amount with the City in accordance with the provisions of Public Contract Code, Section 22300. Such securities, if deposited by the Contractor, shall be valued by the City's Finance Director, whose decision on valuation of the securities shall be final.



Contractor warrants that, upon submittal of an application for payment, all work for which payment has been previously issued by the City and received by the Contractor, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work.

The payment of progress payments by the City shall not be construed as an absolute acceptance of the work done up to the time of such payments and shall not constitute acceptance of defective work.

### **9.05 Final Payment**

The City shall, prior to final acceptance, provide the Contractor with a copy of the final quantities for the various contract bid items and a summary of contract change orders for the Contractor's review. All prior payments shall be subject to correction in determining the total contract sum. The Contractor shall reply promptly in writing, to indicate either the Contractor's concurrence or an explanation of possible discrepancies in the total contract sum.

The project will not be submitted to the Director of Public Works for acceptance until the Engineer and the Contractor concur with the totals of all quantities, costs, contract change orders and the total contract sum. Following concurrence, a semi-final payment will be made to the Contractor after deducting all previous payments and all amounts to be retained under the provisions of the contract. The retention payment shall be due and payable as a final payment after the expiration of thirty-five (35) days following the date of recording at the County after final acceptance of the work.

If within the time fixed by law, a properly executed notice to stop payment is filed with the City, due to Contractor's failure to pay for labor or materials used in the work, all money due for such labor or materials will be withheld from payment to the Contractor in accordance with applicable laws.

If releases are required, the Contractor shall pay or cause to be paid to Subcontractors the amount stated in the conditional releases within five (5) days after receipt of the semi-final payment, and shall promptly thereafter furnish evidence of such payment to the City.

The securities deposited by the Contractor will be released, providing that the following requirements of the contract have been fulfilled:

- a. Satisfactory completion of all construction work and written acceptance of said work by the City;
- b. The submission by the Contractor to the Engineer of all required stop notice releases, submittals, written guarantees, warranties, operating manuals, and other project related documentation;
- c. The return to the Engineer of all drawings and written specifications loaned to the Contractor during the construction period.
- d. The submission by the Contractor to the Engineer of record documents and a set of red-lined drawings showing the revisions to the original set of drawings which reflect the actual construction of the project for preparation of "Record Drawings".

The Contractor agrees that the payment of the final amount due under the contract shall release the City of East Palo Alto from any and all claims or liability on account of all work performed under the contract, except those items previously made in writing and identified by the Contractor as unsettled. Release of the final payment by the City shall not be construed as an acceptance of any defective work or acceptance of improper materials.

### **9.06 Claims**

The term “Claim” shall mean a written demand or assertion by the Contractor seeking, as a matter of asserted right, adjustment in the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, or determination of other disputes or matters in question between the City and Contractor arising out of or related to the Contract Documents or the performance of the work, including claims alleging an error or omission.

A notice of potential claim must be stated with specificity, including identification of the event giving rise to potential claim, the date of the event, and the asserted effect on contract sum and contract time. The notice of potential claim shall include adequate supporting data. Adequate supporting data for a potential claim for an adjustment of the contract time shall include scheduling data demonstrating the impact of the event on the completion of the work. Adequate supporting data for a potential claim for an adjustment of the contract sum shall include a detailed cost breakdown of the items allowed, isolating labor, material, and equipment costs, and providing detailed quantities and unit prices for changed work. If the exact amount of a potential claim is not ascertainable at the time such potential claim is made, the supporting data currently available shall be submitted. Supplemental data supporting the exact amount of the potential claim shall be submitted as soon as available.

Notwithstanding the making of any potential claim or the existence of any dispute regarding any potential claim, unless otherwise directed by the Engineer, the Contractor shall not cause any delay, cessation, or termination in the performance of the work, including portions of the work pertaining to a potential claim.

### **9.07 Time Limit on Potential Claims**

Contractor shall submit any and all notices of potential claims, together with adequate supporting data to the Engineer as soon as possible but not later than ten (10) working days after occurrence of the event giving rise to the claim, or the date the Contractor first recognized, or reasonably should have recognized, the condition giving rise to the claim, whichever is earlier. Contractor hereby expressly waives all claims not made within this time limit.

Contractor is expressly barred from asserting any potential claims of which the Contractor was aware, whether or not the exact amount of such potential claims was ascertainable, that is not submitted to the Engineer prior to the Contractor proceeding with the work.

### **9.08 City Response to Potential Claims**

The Engineer shall promptly review potential claims. If additional supporting data is deemed necessary, the Engineer shall request such additional data within ten (10) working days after receipt of the potential claim. The Contractor shall furnish such additional data no later than ten (10) working days after receipt of the City’s request. The Engineer shall render a decision promptly, but in any event, within thirty (30) working days after the receipt of the potential claim or the receipt of additional supporting data. If the amount of the claim is in excess of \$50,000, the aforesaid thirty (30) working day period shall be sixty (60) working days. Failure of the Engineer to render a decision within the aforesaid thirty (30) or sixty (60) working day period shall be deemed a decision denying the claim and the last day of such period shall be the date of such decision. The decision of the Engineer shall be final and binding unless appealed in accordance with the General Provisions, Section 9.09, “Appeal of the Engineer’s Decision”.

### **9.09 Appeal of Engineer’s Decision**

If Contractor disputes the Engineer’s decision of a claim, the Contractor shall, within thirty (30) calendar days of the decision, make a written appeal of the decision to the Engineer. The written appeal shall include all supporting data upon which the Contractor requests the City to modify its decision, including all documentation transmitted between the Contractor and the Engineer on the underlying potential claim. The Engineer shall make a good faith effort to resolve the potential claim prior to final completion of the Project. In the event the potential claim is not resolved prior to final completion, the Contractor’s potential claim shall be heard by the Director of Public Works prior to recommending final acceptance of the Contract. The Contractor’s administrative remedies under the Contract Documents shall be exhausted

after the decision of the Director of Public Works is rendered. In case of disagreement with the decision of the Director of Public Works, the Contractor may pursue the resolution of the dispute by presenting a formal claim to the City.

## SECTION 10 – GUARANTEE

### **10.01 Warranties**

The Contractor shall be held responsible for and shall make good any defects through faulty or improper workmanship or through defective materials, arising or discovered, in any part of this work within the time specified (stated in the Special Provisions) after the completion and acceptance of the entire project.

- a. *Warranty Form* – Contractor warranties shall be on the Contractor's own letterhead, addressed to the City, and shall in all cases be furnished to the City in duplicate. In addition, furnish City with original copies of all manufacturer's warranties.
- b. *Standard Product Warranties* – are pre-printed written warranties published by individual manufacturers for particular products and are specifically endorsed by the manufacturer to the City. Contractor shall provide to the City the Manufacturer's Standard written warranties of all the equipment installed for the project.
- c. *Special Warranties* – are written warranties required by or incorporated in Contract Documents, to extend time limits provided by standard warranties or to provide greater rights for the City. Special warranties for products and installations that are specified to be warranted, shall be provided. When a special warranty is to be executed by the Contractor, or the Contractor and a Subcontractor, or the Contractor and a Supplier or Manufacturer, the Contractor shall prepare a written document that contains appropriate terms and identification, ready for execution by the required parties. Submit a draft to the City, for approval, prior to final execution.
- d. *Disclaimers and Limitations* – Manufacturer's disclaimers and limitations on product warranties do not relieve the Contractor from providing the specified warranty on the work that incorporates the products. Nor does it relieve suppliers, manufacturers, and subcontractors required to countersign special warranties with the Contractor, from meeting specified warranty obligations.
- e. *Rejection of Warranties* – The City reserves the right to reject warranties and to limit selections to products with warranties not in conflict with requirements of the Contract Documents. The City reserves the right to refuse to accept work where a special warranty, or similar commitment is required, until evidence is presented that entities required to countersign commitments are willing to do so.
- f. *Related Damages and Losses* – When correcting warranted work that has failed, the contractor shall remove and replace other work that has been damaged as a result of such failure, or that which must be removed and replaced to provide access for correction of the warranted work.
- g. *Reinstatement of Warranty* – When work covered by a warranty has failed and been corrected, the warranty shall be reinstated by written endorsement. The reinstated warranty shall be equal to the original warranty with an equitable adjustment for time.
- h. *Replacement Cost* – On determination that work covered by a warranty has failed, the contractor shall replace or rebuild the work to an acceptable condition complying with requirements of the Contract Documents. The Contractor is responsible for the cost of replacing or rebuilding defective work regardless of whether the City has benefited from use of the work through part of its useful service life.
- i. *City's Recourse* – Written warranties made to the City are in addition to implied warranties, and shall not limit duties, obligations, rights and remedies otherwise available under the law, nor shall warranty periods be interpreted as limitations on time in which the City can enforce such other duties, obligations, rights, or remedies.

- j. *Notice to Perform Warranty Work* – The Contractor is required to repair or replace warranted work within 10 days of receiving written notice from the City of a failure of warranted work. If the required repair or replacement work has not been performed by the Contractor within the time allowed, the City may, at its sole discretion, undertake appropriate warranty work without further notice to the Contractor.

In the event that the nature of the failed warranted work is such that further damage will occur, or there is a danger to life or property, the City may undertake immediate repair or replacement without notice to the Contractor.

The cost of repair work undertaken by the City under these provisions shall be recoverable from the Contractor.

### **10.02 Contractor's Guarantee**

Prior to final acceptance, the Contractor shall warrant and guarantee to the City that all work is in accordance with the Contract Documents and is not defective.

The guarantee shall be accompanied by a warranty bond for ten percent (10%) of the final contract sum, which shall warrant the quality of the work for a period of one (1) year after acceptance. The guarantee and warranty bond shall be in accordance with the Agreement Forms furnished in the Contract Documents.

### **10.03 Correction of Defective Work During the Guarantee Period**

If within one (1) year after the date of acceptance, or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, the Contractor shall promptly without cost to the City and in accordance with the City's written instructions, either correct such defective work or if it has been rejected by the City, remove it from the site and replace it with non-defective work.

If the Contractor does not promptly comply with the terms of such instructions within ten (10) working days after written demand by the City, the City may have the defective work corrected. The City may also correct defective work immediately in cases of emergency where delay would cause serious risk of loss or damage. All direct, indirect and consequential costs of correcting defective work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be absorbed by the Contractor.

The Contractor shall remove from the Project site portions of the work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Contractor nor accepted by the City.

## APPENDIX A – GENERAL PROVISION FORMS

<b>Form Title</b>	<b>General Provisions Reference Section</b>
Three Week Look Ahead Schedule	7.05
Daily Extra Work Report (SAMPLE)	4.06
Request For Progress Payment	9.04
Contractor's Certification of Completion	7.19

**City of East Palo Alto, 3-Week Look Ahead Schedule**  
**Project's Title,**  
**Contractor's Name**

Task No.	Work To Be Performed	Comments	Month																														Mo	
			5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	1	2				
			M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S				
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# REQUEST FOR PROGRESS PAYMENT

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

Project \_\_\_\_\_

Project No. \_\_\_\_\_

Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

To: Director of Public Works  
City of East Palo Alto  
1960 Tate Street  
East Palo Alto, CA 94303

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Construction Contract Administrator

A progress payment is requested in accordance with the following:

For the first Progress Payment

This request for a progress payment has the following attached:

- Invoice (Invoice No. \_\_\_\_\_ dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_)
- Schedule of Values analysis supporting the invoice
- Certified Payroll

*and I certify that the following have been submitted and approved by the City:*

- Schedule of Submittals required
- Baseline Construction Schedule
- Schedule of Values (if applicable)
- Storm Water Pollution Prevention Plan

For the second and subsequent Progress Payment

This request for a progress payment has the following attached:

- Invoice (Invoice No. \_\_\_\_\_ dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_)
- Schedule of Values analysis supporting the invoice
- Certified Payroll
- An Updated  Baseline ( or Revised-No. \_\_\_\_\_) Construction Schedule dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_, updated to \_\_\_\_ / \_\_\_\_ / \_\_\_\_

and I certify that the Record Drawings have been updated to incorporate all field changes and extra/changed work as of \_\_\_\_ / \_\_\_\_ / \_\_\_\_\_. Furthermore, I have sought and obtained the assigned City Inspector's review of the status of the Record Drawings as evidenced by the Inspector's signature of acknowledgment on this Request.

\_\_\_\_\_  
City Inspector's Signature

Dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_

\_\_\_\_\_  
Contractor's Signature

# CONTRACTOR'S CERTIFICATION OF COMPLETION

**Project** \_\_\_\_\_ **Project No.** \_\_\_\_\_ **Date** \_\_\_ / \_\_\_ / \_\_\_

**To:** Director of Public Works  
City of East Palo Alto  
1960 Tate Street  
East Palo Alto, CA 94303

**From:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attn:** Construction Contract Administrator

This is to certify that I, \_\_\_\_\_  
am an authorized official of \_\_\_\_\_  
working in the capacity of \_\_\_\_\_

and have been properly authorized by the firm or corporation to sign the following statements pertaining to the subject contract:

I know of my own personal knowledge, and do hereby certify, that the work of the contract described above has been performed, and materials used and installed in every particular, in accordance with, and in conformity to, the contract drawings and specifications.

The contract work is now complete in all parts and requirements, and ready for your final inspection.

I understand that neither the determination by the Owner that the work is complete, nor the acceptance thereof by the City, shall operate as a bar to claim against the Contractor under the terms of the guarantee provisions of the contract documents.

\_\_\_\_\_  
**Contractor's Signature**

\_\_\_\_\_  
**Title**

**ATTACHMENT C**  
**SPECIAL PROVISIONS**

# SPECIAL PROVISIONS

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**1. Description and Location**

The project is located at on San Francisquito Creek’s northern bank adjacent to the intersection of Woodland/University Ave. in the City of East Palo Alto, California.

The project consists of furnishing all labor, materials, and equipment and performing all work necessary and incidental to the completion of the project known as Slope Repair at San Francisquito creek (the “Project”) consisting of mobilization, site preparation, and purchase/installation of a turf reinforcement mat such as ArmorMax or approved equal.

All work in accordance with the recommendations in Slope Stability Evaluation and Temporary Recommendations letter prepared by ENGEO on July 7, 2023.

**2. Pre-Bid Conference**

N/A

**3. Contractor's License**

Contractor shall be licensed under the provisions of chapter 9, Division 3 of the Business and Profession Code of the State of California to do the type of work contemplated in the project. The general class or type of work called for under the contract requires either a class “A” or C27 Contractor license. Contractor shall maintain this license for the duration of the work.

**4. Preconstruction Conference**

The City will schedule a preconstruction conference to be held within 10 calendar days of the date specified in the Notice to Proceed.

**5. Time for Completion**

Contractor has (30) working days to complete the project from the date specified in the Notice to Proceed. The working days do not include the lead time for the procurement of the restroom.

**6. Coordination**

The Contractor shall coordinate all project work with the City’s electrical contractor at the project site.

**7. Submittals**

- a. The Contractor shall provide submittals for the following. The submittals are anticipated to include, but are not limited to the following: turf reinforcement mat.
- b.

Submittal Type	Number of copies/units
List and Schedule of Submittals	1 hardcopy and via email
Proposed Substitutions List	1 hardcopy and via email
Schedule of Values	1 hardcopy and via email
Construction Schedules (Preliminary, Baseline & Revised)	1 hardcopy and via email
Other Submittals	1 hardcopy and via email
Samples	1 (unless required otherwise in the Technical Specifications)
Shop Drawings	1 hardcopy and via email
Manuals and Instructions	3 (unless the number specified in the Technical Specifications is greater)
Warranties/Guaranties	1 hardcopy and via email

Record Drawings	<ul style="list-style-type: none"> <li>a. Original contract drawings</li> <li>b. "As Built" Drawings</li> </ul>	<p>The "job site" print.</p> <p>Original reproducible drawings with all changes marked</p>
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- b Detailed requirements for specific submittals (other than the number to be provided and review times) may be received from the City.
- c The List and Schedule of Submittals shall be provided within 10 working days from the date the Notice to Proceed is issued.
- d The Owner shall review submittals (other than Construction Schedule submittals for which there are different requirements) within 28 days of receipt and shall review each resubmittal within 21 days of receipt of complete submittal.
- e The Construction Schedule submitted shall identify major noise generating construction activities. Contractor to notify adjacent affected properties at least 72 hours prior to major noise generating construction activities.

**8. Liquidated Damages**

Liquidated damages shall be in the sum of one thousand and no/100 (\$1,000) per calendar day.

**9. Bid Items**

Bid Items and total project costs shall include the entire project as shown in the drawings and described in the specifications. All bid items must be filled in completely. Quote in figures only, unless words are specifically requested. Full compensation for conforming to the requirements of each section shall be included in the contract price for each item and no additional compensation will be allowed therefor. See Caltrans Standard Specifications for more information on specs for items not detailed in the Technical Specifications.

The contract price paid for each bid item shall include full compensation for performing the scope of work specified on the plans and specifications including all labor, material, tools, equipment, and incidentals, and for doing all the work associated with each bid item. Refer to the Technical Specifications for details.

**Bid Item 1 – Mobilization:**

Mobilization (includes bonds and insurance) – The Contractor shall furnish all labor, materials, tools, equipment and incidentals to and away from the project site; for establishment and dismantling of all facilities necessary for work on the project; and for all other work and operations which must be performed or costs incurred prior to beginning and after completing work on the various contract items on the project site. These include obtaining all necessary permits, providing on site sanitary facility, address numbers providing all OSHA and City required notices and signs, and providing initial submittals. All the work involved in mobilization as specified herein, and no additional compensation will be allowed therefore. Allowable payment for mobilization shall not exceed 5% of the total for contract items of work. Payment for this item shall be on a lump sum basis.

Payments for mobilization will be made as follows:

- a. When the monthly partial payment estimate of the amount earned, not including the amount of mobilization, is less than 5 percent of the original contract amount, 25 percent of the contract item price for mobilization will be included in the estimate for payment.
- b. When the monthly partial payment estimate of the amount earned, not including the amount of mobilization, is 5 percent or more of the original contract amount, 50 percent of the contract item price for mobilization will be included in the estimate for payment.

- c. When the monthly partial payment estimate of the amount earned, not including the amount of mobilization, is 10 percent or more of the original contract amount, 75 percent of the contract item price for mobilization will be included in the estimate for payment.
- d. When the monthly partial payment estimate of the amount earned, not including the amount of mobilization, is 20 percent or more of the original contract amount, 95 percent of the contract item price for mobilization will be included in the estimate payment.
- e. When the monthly partial payment estimate of the amount earned, not including the amount of mobilization, is 50 percent or more of the original contract amount, 100 percent of the contract item price for mobilization will be included in the estimate for payment.

**Bid Item 2 – Site Preparation and Grading**

The contract price paid for Site Preparation and Grading shall include full compensation for performing the scope of work as specified in Technical Specifications Section 103, "Site Preparation and Grading".

Measurement: Site Preparation and Grading shall be measured and paid by lump sum.

Performing site grading and preparation required for the project including all clearing and grubbing which includes but is not limited to the removal of any trees, rocks, and bushes. All debris and loose surficial soil on the upper half of the slope shall be cleared. The slope's existing vegetation should be kept intact to the maximum extent possible to ensure erosion protection. The slope shall be cleared for the proper installation of the turf reinforcement mat. All work to the satisfaction of the City Inspector/Geotech consultant.

Shall include full compensation for all labor, materials, and material disposal if any.

**Bid Item 3 – Turf Reinforcement Mat**

The contract price paid for Turf Reinforcement Mat shall be paid per square feet. The bid item shall include full compensation for purchase and installation and completion of entire scope of work per satisfaction of the City.

**10. Specialty Items**

N/A

**11. Warranty Duration**

Unless specifically stated in the Technical Specifications, all items shall have a one-year warranty from the date of final acceptance of the project.

**12. Disposal Fees**

The Contractor shall be responsible to pay all applicable disposal fees and the cost of this shall be included in the various bid items.

**13. Materials Supplied by City**

None

**14. Testing**

N/A

**15. Water**

The Contractor shall pay for and shall construct all facilities necessary to furnish water for its use during construction, including potable water service. Water used for human consumption shall be kept free

from contamination and shall conform to the requirements of the State and local authorities for potable water. The Contractor will pay for all water used for their operations on site. The purchase of potable water for construction purposes requires obtaining a Hydrant Permit from the City's Water Company, Veolia.

**16. Special Permits**

N/A

**17. Revocable Items**

Items listed as "revocable" may be deleted entirely or in part, or added at the sole discretion of the City. All provisions of Section 9-1.06 of the Standard Specifications shall not apply to entire or partial deletion of or addition to revocable items.

**18. Hazardous Materials/Conditions**

N/A

**19. Disclosure Information/Documents**

N/A

**21. Work to be Performed by Contractor**

The Contractor shall perform, with its own organization, Contract work amounting to at least **25%** percent of the Contract price, except that any designated "Specialty Items" may be performed by subcontract, and the amount of any such "Specialty Items" so performed may be excluded from the computation.

**22. Work Sites and Payment**

This contract is made of many individual work sites. A work site is typically all concrete replacement work at a single addressed parcel or property. Typically, all tasks, as prescribed in the specifications, are required to be performed to constitute a completed work site. All variances from typical shall be defined in writing by the City Inspector/Representative.

Payment shall be on the basis of completed individual work sites; this shall include all work tasks required to complete an individual work site, including cleanup and restoration work.

**23. Progress Payment Retention**

Retention shall be five percent (5%) for the estimated value of work.

**24. Working Hours**

Construction work shall be limited to 8:00 a.m. to 5:00 p.m. Monday to Friday, excluding City holidays. Exceptions shall be approved by City Engineer.

**25. Notification and Relations with Property Owners**

At ten (10) working days and again at two (2) working days prior to mobilizing to a site or performing any action which affects residents, schools or businesses, the Contractor shall distribute an approved written notice to all adjoining residents and businesses, property owners, tenants and applicable parties. Such notice shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration of the activity, traffic delays, alternative routes, driveway closures and the name, address, and a 24-hour local telephone number of the Contractor. A draft copy of the notice shall be provided to the City Engineer for approval, prior to distribution.

The Contractor shall provide the Engineer a copy of the proposed written notification prior to mailing or delivery for approval at least 5 days prior to their distribution.

Delays in performing the work or changes in the construction schedule, for any reason, shall require the



Contractor to provide written re-notification to residents, businesses, City services within 24 hours that any delay or change is reported to or discovered by the City Engineer.

The Contractor shall not impede or impair waste haulers, recycling operations and buses within the project area. It is the Contractor's responsibility to determine which waste haulers, recycling operators and buses are scheduled to work/run in the project area and to develop a project schedule that will not impede or impair their operations.

**26. Public Convenience and Safety**

The Contractor shall provide for the convenience and safety of traffic and the public in conformance with the provisions in Section 7-1.03 and Section 7-1.04 of the 2010 Caltrans Standard Specifications.

**27. Traffic Control and Lane Closure Restrictions–**

If needed, the contractor is required to provide and maintain throughout the duration of the project adequate traffic control for all modes of traffic. No blocking of the public way is permitted at any time.

**28. Staging Areas and Field office**

Contractor will be required to provide appropriate staging. Site staging in the public right of way may be permitted as approved by the City.

**29. Protection and Restoration of Existing Improvements**

Contractor shall protect in place, or remove and replace, existing improvements which may be damaged by Contractor's operations. Existing improvements may include, but are not limited to, irrigation lines, irrigation control wiring, landscaping, trees/roots, pavement, drainage devices, lighting, roads and roadway markings, and pedestrian walkways. Any damage to existing facilities, landscape, or irrigation shall corrected by the Contractor to original condition at no cost to the City.

Contractor shall ensure construction materials do not enter the storm drain system.

**ESCROW AGREEMENT FOR SECURITY DEPOSITS**  
**IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between CITY OF EAST PALO ALTO whose address is 2415 University Avenue, East Palo Alto, California 94303 hereinafter called "Owner", and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called "Contractor", and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, 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 with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the contractor, the owner 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 Owner within 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 Owner and Contractor. Securities shall be held in the name of the City of East Palo Alto, and shall designate the Contractor as the beneficial owner.
- (2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contractor provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the Owner 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 owner 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 Owner. These expenses and payment terms shall be determined by the Owner, 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 Owner.
- (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 Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor. The signature of the representative of Owner granting such consent shall be acknowledged by a notary public.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner 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 Owner and the Contractor pursuant to Sections (4) to (8), inclusive, of this agreement, provided that the written authorization from Owner to Escrow Agent given pursuant to paragraph 6 above authorizing release of funds to Contractor, has an acknowledgment of the signature of Owner's representative. Assuming that any notice received by Escrow Agent which is required to have a notary's acknowledgment of a signature according to this agreement, is so acknowledged, the Owner 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 Owner and on behalf of Contractor in connection with the foregoing, and exemplars of the respective signatures are as follows:

On behalf of Owner:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

On behalf of Contractor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

On behalf of Escrow Agent:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

At the time the Escrow Account is opened, the Owner 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 dates set forth below.

By: City of East Palo Alto  
(Owner)

By: \_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature \*

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature \*

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
(Escrow Agent)

\_\_\_\_\_  
Signature\*\*

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

*\* Signature of Contractor shall be notarized. Signature shall be of two classes of officers of a corporation, unless accompanied by copy of Resolution of Board of Directors authorizing execution of this agreement.  
\*\*Signature shall be notarized.*

**ATTACHMENT D – SLOPE STABILITY EVALUATION AND TEMPORARY  
RECOMMENDATIONS LETTER**

### EXHIBIT 1: Approximate Location of the Site



## DOCUMENT REVIEW

### Geologic Mapping

The study area is located approximately 150 feet west of the intersection of Woodland Avenue and University Avenue in East Palo Alto, California. The aerial images indicate that the study area has not gone under significant change since 1948. Additionally, according to a published geologic map of the site (Dibblee, 2007) the study area vicinity is underlain by Holocene-age alluvium deposits (Qa) consisting of sand, gravel, and clay of stream channel, fan, and terrace deposits undivided by age or genesis in upland areas, and including many fringing colluvial deposits.

### Provided Documents

We were provided with the following documents.

- Geotechnical Report for San Francisquito Creek Upstream Retaining Wall Systems, Prepared by Kleinfelder, Dated September 15, 2021.
- Hydraulic Evaluation and Rock Slope Protection Sizing and Design, Prepared by HDR, Dated January 5, 2021.
- Newell Road Bridge Replacement, Type Selection Report, Prepared by NV5, Dated December 2021.

- Newell Road Bridge Replacement 65% Plans, Prepared by NV5, Dated December 2022.
- Newell Road Bridge Replacement 35% Preliminary Plans, Prepared by NV5, Dated December 16, 2021.
- Map and Construction Plans for San Francisquito Creek, Prepared by Valley Water, Dated February 25, 2022.
- Pope-Chaucer Street Bridge (Bridge No. 36C0759) Replacement at San Francisquito Report, Prepared by NV5, Dated February 12, 2013.
- San Francisquito Creek Flood Reduction and Ecosystem Report, Prepared by ESA, Dated February 2022.
- San Francisquito Creek, Landscape Plans, Prepared by Valley Water, Dated September 3, 2020.

We reviewed the provided existing plans and geotechnical data and used the site's nearby cross-sections, boring logs, and laboratory test results prepared by Valley Water and Fugro and presented in Kleinfelder's report (Reference 4).

## **SITE RECONNAISSANCE**

We conducted a site reconnaissance on May 17, 2023. During our reconnaissance, we observed the previously occurred slope instability on the northern bank of the San Francisquito Creek between Manhattan Avenue and University Avenue which appeared relatively unchanged since our original site visit on January 23, 2023. Cracks on the current slope along Woodland Avenue and approximately 3 to 4 inches of a gap were visible between the temporary flood wall and the top of the bank. Broken tree branches, roots, and debris have accumulated and interlocked with existing vegetation on parts of the northern bank along the creek.

## **SLOPE STABILITY ANALYSIS**

### **Method of Analysis**

Thorough geotechnical evaluation of slope stability requires careful assessment of all the input parameters along with the selected method of analysis. While there are many different methods of stability analysis and numerous available computer programs, we selected the program Rocscience Slide 2. Slide 2 uses a search routine to locate the minimum factor of safety and critical slip surface. We performed our analysis using the Spencer (1967) method.

We selected our representative cross-section where the observed slope instability occurred. We evaluated the slope stability for static conditions under four different groundwater conditions. Our model includes full creek (groundwater elevation at approximately 36 feet, NAVD88), quarter-full (groundwater elevation at 21 feet, NAVD88), and dry creek (groundwater elevation below the bottom of the creek). Additionally, we performed rapid drawdown analysis considering that the groundwater level changes from full to quarter-full over a short period of time. This condition simulates a flood event that may occur at the site. We did not evaluate the stability of the slope for the seismic condition as the purpose of our study was to evaluate the temporary condition of the slope.



### Acceptable Factors of Safety

Considering the purpose of our study is to evaluate the temporary condition of the creek bank, we recommend that a static factor of safety of 1.2 be considered adequate for the creek’s bank stability for steady-state conditions and 1.1 for the rapid drawdown condition. We considered the various levels of conservatism involved in determining the engineering properties of the soil (density, shear strength, unit weight, permeability, etc...), the assumptions made in the method of analysis, and potential variations in field conditions.

### Geometry and Idealized Soil Profiles

No topographic data was available for the study area for our analyses. Therefore, we estimated the slope geometry for our selected cross-section based on field measurements using a hand level and tape measure and compared with an existing cross-section (RW3R-STA 10+00) provided in Kleinfelder’s report (Reference 4). We based our model geometry on the noted existing cross-section and modified the northern bank with our field measurements.

We modeled the soil profile using the existing geotechnical boring data provided in Appendix B of Kleinfelder’s report (Reference 4). We used Boring SF-9 and the associated laboratory testing to model the soil profile and estimate soil properties in our model.

### Results of Analyses

We performed slope stability analyses for static conditions under steady-state seepage and rapid drawdown conditions, as previously discussed. The location of our selected cross-section is shown in Exhibit 1.

The static factors of safety of the northern bank under existing conditions are shown in Table 1.

**TABLE 1: Result of Analyses**

CONDITION	FACTOR OF SAFETY
Full Creek, Steady-State Seepage	1.5
Quarter Full Creek, Steady-State Seepage	1.1
Dry Creek, Steady-State Seepage	1.2
Rapid Drawdown	1.2

### TEMPORARY RECOMMENDATIONS

We understand that San Francisquito Joint Power Authority has a long-term plan to construct a flood wall and address long-term stability for the creek bank. Our recommendations should only be considered as temporary measures and the long-term stability of the creek bank should be addressed in future planned studies. Based on our findings from our site reconnaissance, our review of the provided information, and the results of our slope stability analysis for the study area, our recommendations for temporary measures to address the observed slope instability in the study area are summarized as follows.

- We recommend removing debris and loose surficial soil from the upper half of the slope where instability was observed. The slope's existing vegetation should be kept intact to the maximum extent possible to help with erosion protection.
- Following removal of debris and loose surficial soil, we recommend installing a turf reinforcement mat, such as ArmorMax, over the face of the slope where instability was observed to improve surficial stability of the slope and help prevent further erosion. The fabric should be installed in accordance with the manufacturer's recommendations and should extend a minimum of 5 feet beyond the area of observed slope instability.
- We recommend bi-annual monitoring of the creek bank adjacent to the road to check for indications of progressive creek bank instability such as new or worsening tension cracks at the top of slope or in the adjacent roadway, surficial failures, and scour at the base of the creek bank. We also recommend additional monitoring during and after major precipitation events and when the water level within the creek rises above an elevation of 21 feet (NAVD88). We recommend that consideration be given to the closure of the adjacent lane of Woodland Avenue if indications of progressive creek bank instability are observed.

We make no representations as to the accuracy of dimensions, measurements, calculations, or any portion of the slope design. If you have any questions or comments regarding this letter, we will be glad to discuss them with you.


If you have any questions or comments regarding this letter, please contact us and we will be glad to discuss them with you.

Sincerely,

ENGEO Incorporated

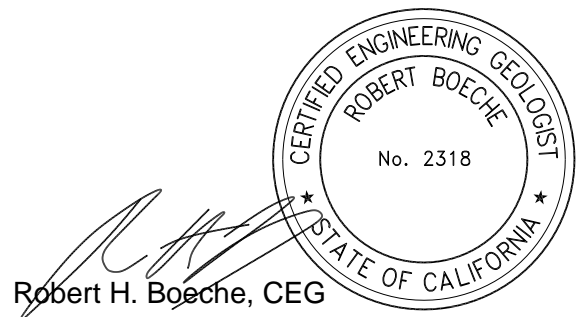


Aryan Noroozi



Nick Serra, PE

an/ns/rhb/cjn

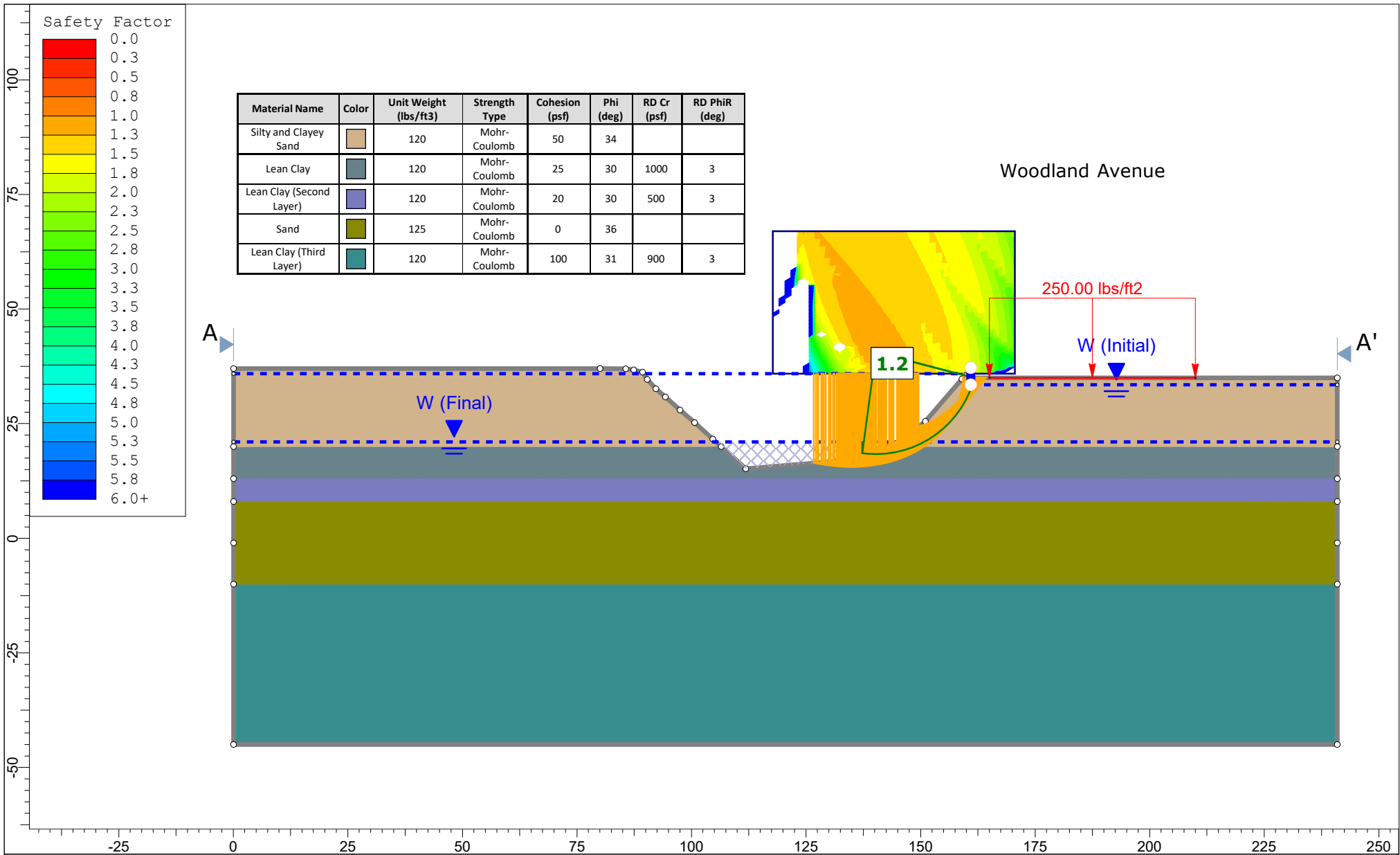


Robert H. Boeche, CEG

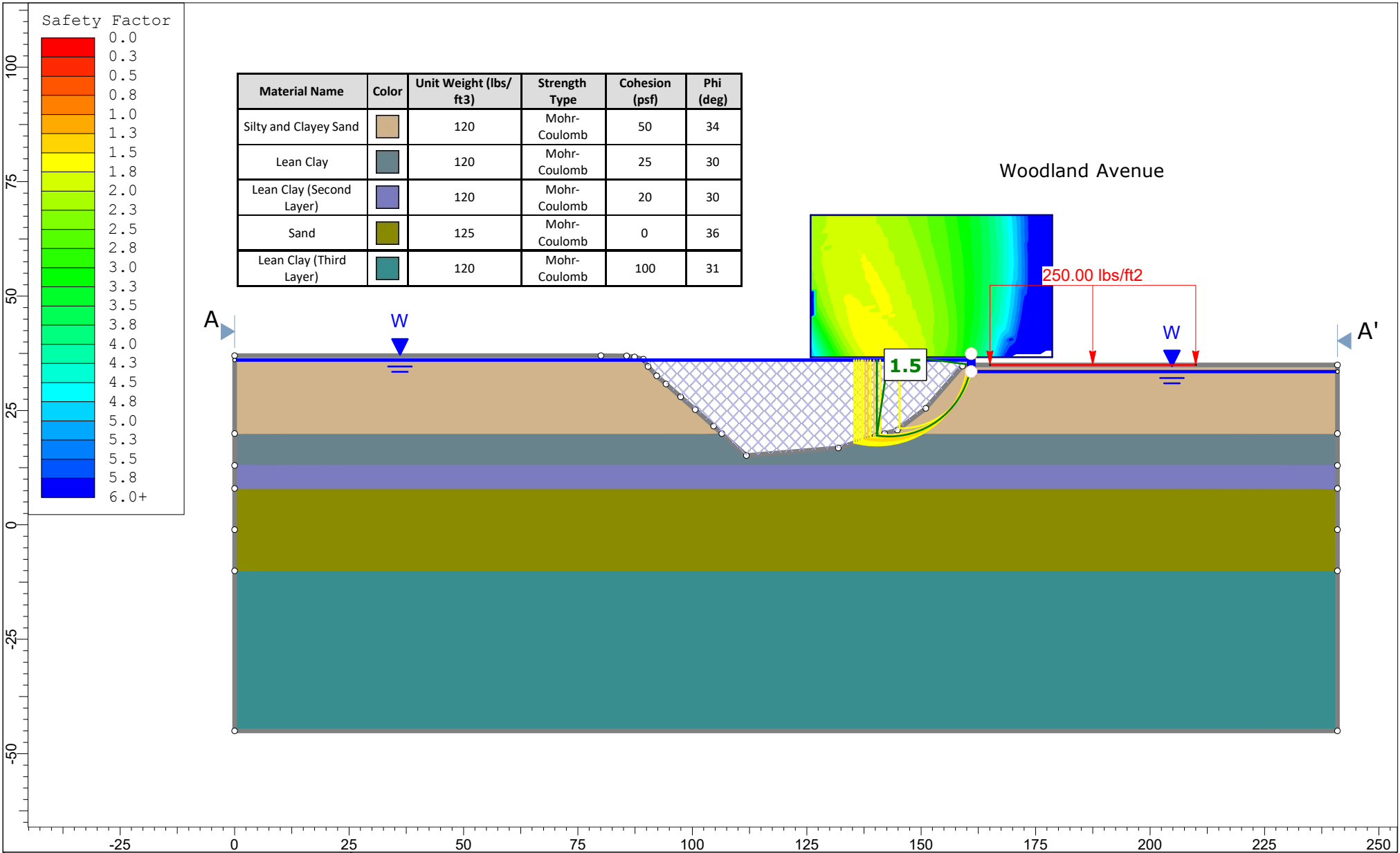
Attachments: Select References  
Slope Stability Analysis

## SELECTED REFERENCES

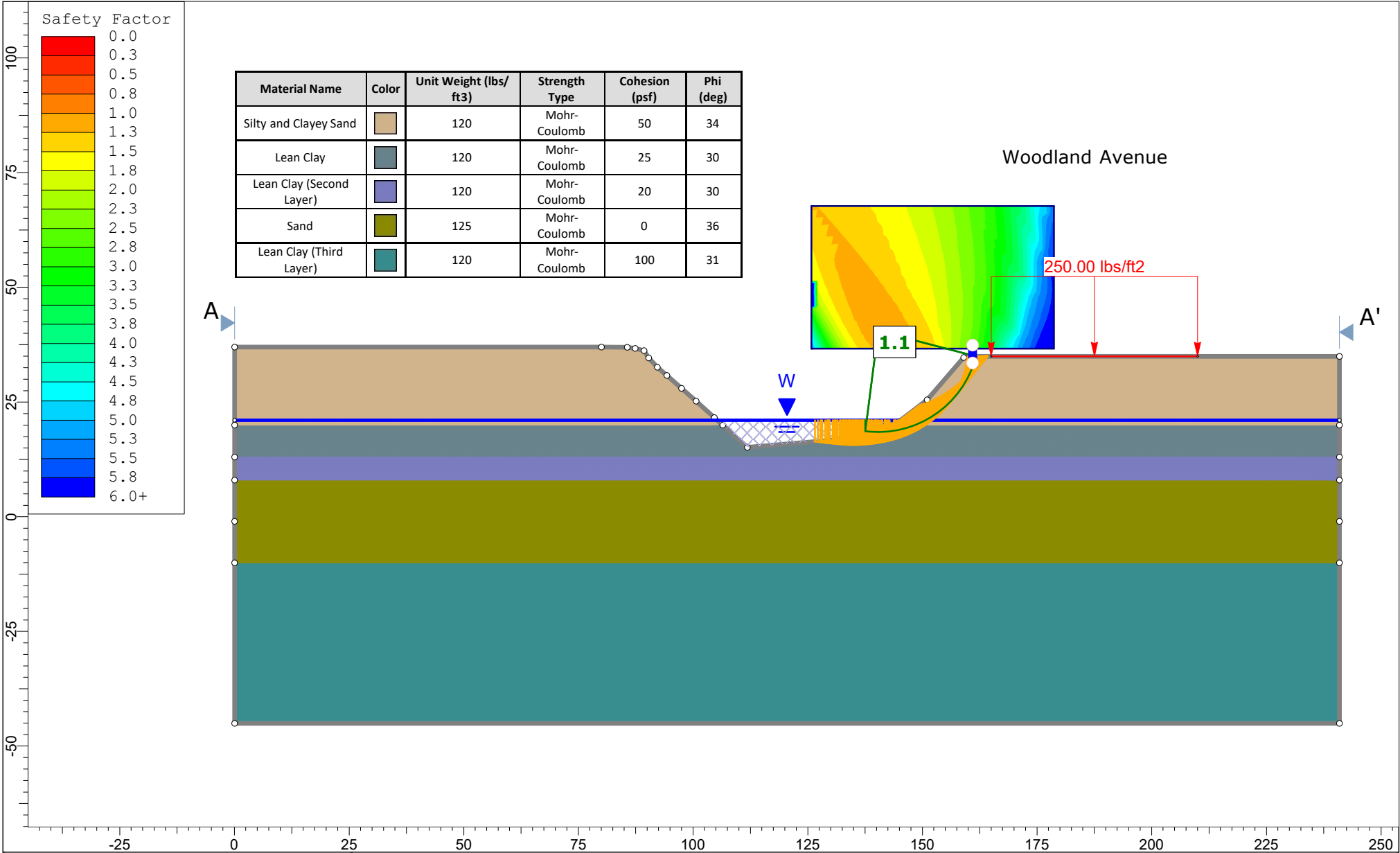
1. Dibblee, T.W. and Minch, J.A., 2007, Geologic map of the Palo Alto and Mountain View quadrangles, Alameda, San Mateo, and Santa Clara Counties, California, Dibblee Geological Foundation, Dibblee Foundation Map DF-350.
2. ESA. 2022. San Francisquito Creek Flood Reduction and Ecosystem Restoration – Reach 2 (Urban Reach) Project, Habitat basis of Design. February 2022. Project No. D202000175.
3. HDR. 2021. Hydraulic Evaluation and Rock Slope Protection Sizing and Design, San Francisquito Creek Transition Floodwall Project. January 5, 2021.
4. Kleinfelder. 2021. Geotechnical Report for San Francisquito Creek Upstream Retaining Wall Systems, Newell Road to Euclid Avenue, Palo Alto, California. September 15, 2021. Project No. 20201694.010A.
5. NV5. 2020. Pope-Chaucer Street Bridge (Bridge No. 36C0759) Replacement at San Francisquito, Prepared for Santa Clara Valley Water District. February 12, 2013. Project No. SJB037100.
6. NV5. 2021. Newell Road Bridge Replacement, Type Selection Report, City of East Palo Alto, California. December 2021. Project Number: 226321-0000034.00.
7. NV5. Newell Road Bridge Replacement 65% Plans. December 2022. Project No. C12142825.
8. NV5. Newell Road Bridge Replacement 35% Preliminary Plans. December 16, 2021. Project No. C12142825.
9. Valley Water. Map and Construction Plans for San Francisquito Creek, West Bayshore Road Newell Road to Euclid Avenue, Channel Widening Project. February 25, 2022. Project No. 26284002.
10. Valley Water. San Francisquito Creek, West Bayshore Road Newell Road to Euclid Avenue, Landscape Plan. September 3, 2020. Project No. 26284001.



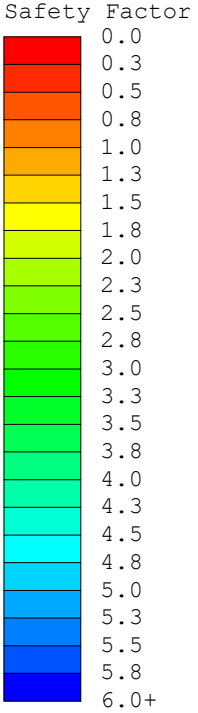
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	Group		Scenario	
	Drawn By		Company	
	Date		File Name	
	AN		Scenario 1 - Static - Rapid Drawdown	
	6/26/2023		ENGEO Inc.	
			Slide Model 2 - Update 2 - Final.slmd	



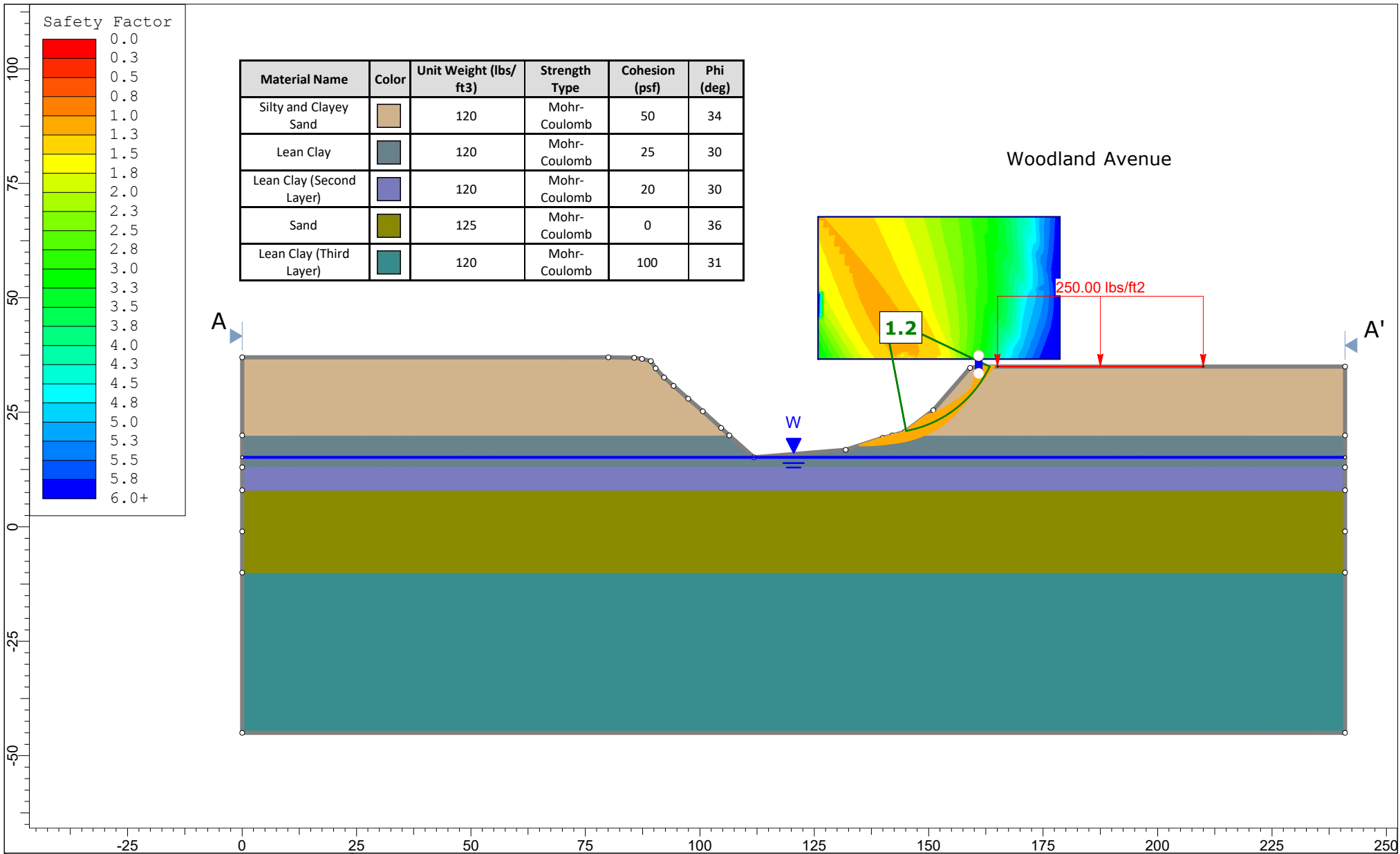
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<i>Group</i>		<i>Scenario</i>	
		Scenario 1 - Static - Full	
<i>Drawn By</i>		<i>Company</i>	
AN		ENGEO Inc.	
<i>Date</i>		<i>File Name</i>	
6/26/2023		Slide Model 2 - Update 2 - Final.slmd	



Material Name	Color	Unit Weight (lbs/ft3)	Strength Type	Cohesion (psf)	Phi (deg)
Silty and Clayey Sand		120	Mohr-Coulomb	50	34
Lean Clay		120	Mohr-Coulomb	25	30
Lean Clay (Second Layer)		120	Mohr-Coulomb	20	30
Sand		125	Mohr-Coulomb	0	36
Lean Clay (Third Layer)		120	Mohr-Coulomb	100	31



	Project		San Francisco Creek Bank	
	Group		Scenario	
	Drawn By		Company	
	Date		File Name	
	AN		Scenario 2 - Static - Quarter Full	
	6/26/2023		ENGEO Inc.	
			Slide Model 2 - Update 2 - Final.slmd	



<i>Project</i>		San Francisquito Creek Bank	
<i>Group</i>		<i>Scenario</i>	
		Scenario 3 - Static - Dry	
<i>Drawn By</i>		<i>Company</i>	
AN		ENGEEO Inc.	
<i>Date</i>		<i>File Name</i>	
6/26/2023		Slide Model 2 - Update 2 - Final.slmd	

**ATTACHMENT E**  
**TECHNICAL SPECIFICATIONS**



**TECHNICAL SPECIFICATIONS  
OCTOBER 10, 2023**

**SLOPE REPAIR AT SAN FRANCISQUITO CREEK  
2023**

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**SECTION 100****DEFINITION OF BID ITEMS****PART 1 – GENERAL**

The bid item descriptions listed in the Bid Schedule of the proposal are not intended to be exclusive and comprehensive descriptions of all the work categories and scope necessary to complete the project. As such, the Contractor shall determine, segregate and include in his/her pricing for each bid item the cost for furnishing and installing all labor, materials, tools, equipment and other incidentals necessary to complete all of the contract work involved in the project, as described by the Contract Documents, complete in place.

Unless otherwise noted, estimated quantities on the bid schedule are believed to be accurate, however, the Contractor should self-verify the quantities as it relates to ordering sufficient material and scheduling work. Actual field measured quantities, complete in place, not the quantities listed in the bid schedule, will govern final payment.

**PART 2 - BID ITEM DESCRIPTIONS****A - Mobilization (Bid Item No. 1)**

The contract price paid for Mobilization shall include full compensation for performing the scope of work as specified in Technical Specifications Section 102, "Mobilization".

Measurement: Mobilization shall be measured and paid by **lump sum**.

The Contract lump sum price for Mobilization should not exceed five percent (5%) of the total base bid contract price. Any amount bid on the bid schedule in excess of five percent (5%) shall be withheld from payment until the completion of project, to be paid as part of the final payment.

**B – Site Preparation and Grading (Bid Item No. 2)**

The contract price paid for Site Preparation and Grading shall include full compensation for performing the scope of work as specified in Technical Specifications Section 103, "Site Preparation and Grading".

Measurement: Site Preparation and Grading shall be measured and paid by **lump sum**.

Performing site grading required for the project including earthwork calculations for project cut/fill, rough and fine grading. It includes the removal of any trees, brushes, and bollard removal. Shall include full compensation for all labor, and materials removal due to the conflict with the new restroom.

**C – Turf Reinforcement Mat (Bid Item No. 3)**

Measurement: The contract price paid for Turf Reinforcement Mat shall be paid per square feet.

The bid item shall include full compensation for purchase and installation and completion of entire scope of work per satisfaction of the City.

## SECTION 101

### GENERAL REQUIREMENTS

#### PART 1 - GENERAL

##### 1.1 WORK INCLUDED

All work shall conform to the applicable provisions of the San Mateo County Standard Specifications and Details, the latest State of California, California Manual on Uniform Traffic Control Devices (MUTCD), Department of Transportation, Standard Plans and Standard Specifications; and the project plans and specifications.

No work shall be performed on Saturdays and Sundays for the duration of this project unless a variance is approved by the City.

Implementation of Construction Best Management Practices (BMPs) will be required for this project.

##### 1.2 PROJECT SITE MAINTENANCE

Throughout all phases of construction until final acceptance, including any periods of work suspension, the site shall be kept clean and free from rubbish and debris. The Contractor shall furnish and operate a self-loading motor sweeper with spray nozzles at least once each working day for the purpose of keeping paved areas acceptably clean wherever construction, including restoration, is incomplete.

Dust control shall consist of applying either water or dust palliative, or both, for the alleviation or prevention of dust nuisance. Dust resulting from the Contractor's performance of the work, either inside or outside the right of way, shall be controlled by the Contractor in conformance with the provisions in Section 7, "Legal Relations and Responsibility to the Public" of the State Standard Specifications. Water shall be applied as provided in Section 17 "Clearing and Grubbing" and dust palliative shall conform to and be applied as provided in Section 18 "Dust Palliative" of the State Standard Specifications.

Excess excavated materials from any source shall be removed from the site immediately. Forms and lumber shall be removed the day of form removal. Materials and equipment shall be removed from the site as soon as they are no longer necessary.

Before the final inspection, the site shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance. All pavement areas shall be swept with a street sweeper immediately prior to the final inspection. All concrete areas shall be broom cleaned. All topsoil areas shall be raked. All cleanup costs shall be included in the Contractor's bid. In the event that the Contractor fails to perform this final cleanup, the Agency may remove and/or

dispose of the articles or materials at the Contractor's expense. Care shall be taken to prevent spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned.

The Contractor is advised that the disposal of solid waste sewage, industrial waste or other polluted waters into public storm drain system is prohibited under East of Palo Alto Municipal Code and under California State Fish & Game Code Section 5650. Any fines or penalties levied against the Contractor for violation of the above and related regulation are the sole responsibility of the Contractor.

### 1.3 SANITARY FACILITIES

The Contractor shall provide and maintain enclosed, portable restrooms for the use of personnel engaged in the work. These accommodations shall be maintained in a neat and sanitary condition, and shall comply with all applicable laws, ordinances, and regulations pertaining to public health and sanitation.

### 1.4 STAGING & STORING

The Contractor shall store all equipment and materials in a manner which does not interfere with public right of way. No equipment will be allowed to be parked overnight within the limits of the public right-of-way. Contractor may make arrangements with local property owners for temporary staging areas; however, the location shall first be brought to the attention of the Engineer for approval. Contractor will also be required to provide proof in writing from the property owner that the Property is allowed for use as a temporary staging area.

Contractor shall take adequate measures to secure all equipment and materials at the staging area after the completion of work each day. The City will not be responsible for any damage or loss incurred on Contractor's equipment or materials.

### 1.5 PROTECTION AND RESTORATION OF EXISTING IMPROVEMENTS

The Contractor shall be responsible for the protection of public and private property adjacent to the work and shall exercise due caution to avoid damage to such property.

The Contractor shall repair or replace all existing improvements within the right-of-way or on adjacent private property which are not designated for removal, but that are damaged or removed as a result of its operations. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension.

### 1.6 PRE-CONSTRUCTION DOCUMENTATION

Contractor shall submit a video on DVD of the construction area prior to beginning work. This video shall be the existing condition record of the job site. The taping shall be done by the Contractor and a copy of the DVD shall be furnished to the Project Inspector at the beginning of the Work. The Project Inspector may participate during the videotaping task. Contractor shall provide a written log noting defects or irregularities in the existing pavement area.

### 1.7 PUBLIC NOTIFICATION AND OUTREACH

Two weeks prior to beginning any work on the project, the Contractor shall deliver written notice to all adjoining residents, businesses, tenants and other applicable parties listed below. Notice shall be given for general construction activity in an area as well as specific activities that will, in anyway, inconvenience residents/property owners/tenants or affect their operations or access to their property. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration, and the name, address, and contact number of the Contractor's superintendent and of the City's Project Engineer.

A follow up notice shall be distributed two days prior to the construction activity. Copies of all notices shall be provided to the Engineer for approval five working days prior to the desired distribution date.

The Contractor shall contact and coordinate the work with the following, but not limited to, parties. Two-week notification shall also be given to adjacent properties prior to beginning any work.

#### 1.8 COORDINATION WITH OTHER PROJECTS

Contractor shall make arrangements with the Engineer to coordinate construction schedule operations between the City's adjacent projects and this Project to avoid conflict between projects.

#### 1.9 TREE AND ROOT PROTECTION

Due care shall be taken when working near trees, public or private. For all phases of the work, Contractor is responsible for protecting trees and Contractor will replace any trees judged damaged by the City, unless otherwise noted on the Plans.

Trees situated in a tree well or sidewalk planting strip shall be wrapped with 4 layers of orange plastic fencing as padding from the ground to the first branch with 1-inch thick wooden slats bound securely on the outside. During installation of the wood slats, caution shall be used to avoid damaging any bark or branches. Major scaffold limbs may also require protection as directed by the Engineer to a height of 12 feet above the ground. Contractor shall make every effort to keep deleterious materials associated with project construction from contacting any part of the trees.

For all phases of work, Contractor shall not cut any roots greater than 2-inches in diameter. When roots greater than 2-inches in diameter are encountered, Contractor shall notify the Engineer and allow 3 business days to cut the roots. No compensation shall be given to the Contractor for any time for the City root cutting. Contractor shall not scrape, skin, or pull on roots. Any root cutting shall be done with clean and sharp blades/tools.

Should tree, root, and/or bush pruning be required to construct the improvements shown on the plans, specified in these Specifications, and as directed by the Engineer, Contractor shall notify the Engineer and allow 3 business days before pruning. All pruning shall be done as directed by the City Arborist and in the presence of the City Arborist.

Contractor shall make every effort to avoid damaging any City owned property, including (roots, trunk and canopy of) City maintained trees. If damages to trees are found to be as part of Contractor negligence, Contractor shall be responsible for as follows:

- a. Contractor will provide full reparation to include: removal of irreparable tree and replacement with similar approved species. Contractor will perform this work themselves (at Contractor's expense) under supervision of City forestry personnel, and/or,
- b. Contractor will reimburse City for City expenses incurred in the related reparation work, consisting of but not limited to, site inspections, corrective pruning, tree removal, and tree replacement.
- c. Damages shall be graded 1 (minor) through 5 (replacement), as determined by City, with monetary values attached.

#### 1.10 SITE CLEANUP

Payment for work required under the General Requirements shall be included in the prices bid for the individual items of work and no additional compensation will be allowed therefore unless specifically noted otherwise.

In the event that the Contractor fails to perform this final cleanup, the Agency may remove and/or dispose of the articles or materials at the Contractor's expense.

Care shall be taken to prevent spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned.

The Contractor is advised that the disposal of solid waste sewage, industrial waste or other polluted waters into public storm drain system is prohibited under East of Palo Alto Municipal Code and under California State Fish & Game Code Section 5650. Any fines or penalties levied against the Contractor for violation of the above and related regulation are the sole responsibility of the Contractor.

#### 1.11 PROTECTION AND RESTORATION OF EXISTING IMPROVEMENTS

The Contractor shall be responsible for the protection of public and private property adjacent to the work and shall exercise due caution to avoid damage to such property.

The Contractor shall repair or replace all existing improvements within the right-of-way or on adjacent private property which are not designated for removal, but that are damaged or removed as a result of its operations. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension.

#### 1.12 POTHOLING PRIOR TO WORK

- A. Prior to any demolition work, Contractor must pothole project site to confirm underground utility conflicts. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Contractor shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service

- installations damaged by Contractor's operations.
- B. Prior to performing Work at the Site, Contractor shall lay out the locations of Underground Facilities that are to remain in service and other significant known underground installations indicated by the Underground Facilities Data. Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Contractor shall immediately report to Owner for disposition of the same.
  - C. If during construction, an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by Owner for bidding or in information on file at USA or otherwise reasonably available to Contractor, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency), identify the owner of such Underground Facility and give written notice to that owner and to Owner. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
  - D. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for (a) reviewing and checking all available information and data including, but not limited to, information made available for bidding and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
  - E. Consistent with California Government Code §4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding. Owner will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or information made available for bidding with reasonable accuracy, and equipment on the Project necessarily idled during such Work. Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of Owner or the utility to provide for removal or relocation of such utility facilities.

### 1.13 ORDER OF WORK

Work Sequence and Specific Considerations shall include but shall not be limited to the following provisions (i.e., although these requirements are not restated under each individual bid item, they shall be deemed included under each bid item as applicable at no additional cost). The following is a list of general sequences and special considerations for the project:

First order of work:

- A. Contractor, except in an emergency, shall contact the appropriate regional notification center, Northern California Underground Service Alert at 811 or 1-800-227-2600 or on-line at [www.digalert.org](http://www.digalert.org) at least three working days prior to commencing any excavation, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the City has been given the identification number by the Contractor.
- B. The Contractor shall pothole for utilities sufficiently in advance of construction to permit grade adjustments of the water main to maintain desired clearances. No pipe shall be installed until potholing is complete. Coordinate with the City.



- C. The contractor is responsible for conducting any and all coordination required among impacted utility companies and work with the City Engineer to confirm schedules and performance.
- D. All monumental benchmarks, land corners, and triangulation points, established by other surveys, existing within the construction area shall be preserved. If existing monuments interfere with the work, secure written permission before removing them.

#### 1.14 REFERENCES

All references to 'City' in any of the contract documents or referenced standards or publications shall mean the City of East Palo Alto.

All references to 'Engineer' in any of the contract documents or referenced standards or publications shall be the designated representative of the City of East Palo Alto.

#### 1.15 MEASUREMENT AND PAYMENT

Payment for work required under the General Requirements shall be included in the prices bid for the individual items of work and no additional compensation will be allowed therefore unless specifically noted otherwise.

**END OF SECTION 101**

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## **SECTION 102**

### **MOBILIZATION**

#### **PART 1 - GENERAL**

##### **1.01 WORK INCLUDED**

Mobilization shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the project site, and for all other work and operations which must be performed or for costs incurred prior to beginning work and in the course of work on various contract items at the project site.

#### **PART 2 – MATERIAL AND EQUIPMENT**

(None)

#### **PART 3 – EXECUTION**

(None)

#### **PART 4 – MEASUREMENT AND PAYMENT**

Included in Section 100 of these Technical Specifications.

**END OF SECTION 102**

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## **SECTION 103**

### **SITE PREPARATION AND GRADING**

#### **PART 1 - GENERAL**

##### **1.01 WORK INCLUDED**

Includes all clearing, grubbing, grading, and site preparation, in accordance with Caltrans standard specifications. Clearing and grubbing consists of removing objectionable material from the following construction areas:

###### **1.Described areas in the RFB**

Clear and grub before performing earthwork in an area. Do not injure standing trees, plants, and improvements shown to be protected. It includes the work for removal of existing tree, brushes and bollard if they are in conflict with the scope of work or new structural.

##### **1.02 REFERENCES**

The Contractor shall comply with the latest edition of the State Standard Plans and Specifications, California Department of Transportation, latest edition.

##### **1.03 SUBMITTALS**

###### **A. CONSTRUCTION (EQUIPMENT AND MATERIAL STAGING/ FACILITIES)**

Staging of equipment and material shall be proposed and secured by the Contractor and approved by the Public Works Director.

At least 15 working days prior to start of work, the Contractor shall submit a construction (equipment) staging plan for approval prior to commencing work.

## B. CONSTRUCTION PHASING PLAN

At least 15 working days prior to start of work, the Contractor shall submit a construction phasing plan for approval prior to commencing work

Once approved, the Contractor may modify the Construction Phasing Plan only with permission from the Public Works Director.

## PART 2 – MATERIAL AND EQUIPMENT

(None)

## PART 3 – EXECUTION

### 3.01 CLEARING AND GRUBBING

Clear all construction areas above original ground of (1) all vegetation such as trees, logs, upturned stumps, roots of downed trees, brush, grass, and weeds and (2) other objectionable material including concrete, masonry, and debris. Grub all construction areas to a depth necessary to remove all trees, existing stumps, roots, buried logs, and other objectionable material. Dispose of objectionable materials resulting from clearing and grubbing activities

### 3.02 GRADING AND COMPACTION

Compaction must meet Caltrans standard specifications.

Relative compaction specifications apply. The moisture content of material to be compacted to at least 95 percent must be such that the specified relative compaction is attained. Do not compact material that contains excessive moisture until the material is dry enough.

### 3.03 FOUNDATION PREPARATION

Contractor is responsible for preparing the foundation for the concrete footing per section 105 of the technical specifications.

### 3.04 HAULING

Contractor is responsible for all hauling.

### 3.05 EXISTING LANDSCAPE

Per Caltrans standard specifications section 20-10.02C(2) titled "Check and Test Existing Irrigation Facilities", Before performing irrigation system work, check existing irrigation facilities to remain in place or to be relocated. Check for deficiencies including missing parts, damaged components, and improper operation. Correct deficiencies as ordered. The correction of deficiencies is change order work.

### 3.06 MAINTAINING EXISTING PLANTED AREA/ TRANSPLANT TREES

Existing plant basins must be kept well-formed and free of sediment. If trees need to be transplanted, follow Caltrans standard specifications per section 20-10.03C(3).

**PART 4 – MEASUREMENT AND PAYMENT**

Included in Section 100 of these Technical Specifications.

**END OF SECTION 103**

**END OF TECHNICAL SPECIFICATIONS**

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