

Bid Package – ISSUED FOR BID

Tilton House Retrofit

**19665 Hale Ave
Morgan Hill, CA 95037**

RFB-2022-09

Date: July 8, 2022

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BID PACKAGE CONTENTS

A. Project Narrative

B. Bidding Documents

1. Invitation to Bid
2. Instructions to Bidders
3. Virtual Bid Opening Information

C. Bid Forms

1. Bid Proposal Form
2. List of Subcontractors
3. Noncollusion Affidavit
4. Bid Bond

D. Agreement Forms

1. Form of Agreement - at time of execution, Agreement will include:
 - Exhibit A: Agreement Scope of Services (Contractor Bid Proposal Form)
2. General Condition of the Agreement
 - Exhibit 1: Labor and Materials Payment Bond
 - Exhibit 2: Performance Bond
 - Exhibit.3: Worker's Compensation Certificate
 - Exhibit 4: Proposed Change Order Request Template
 - Exhibit 5: Change Order Template
3. Supplemental Conditions of the Agreement
 - Attachment 1: House Inspection Report

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A. PROJECT NARRATIVE

Project Description

The Tilton House is a 2 story 2630 square foot home built in 1917 with a 261 square foot basement. In the late 1900's a 570 square foot addition was added to the existing structure making it 3200 square feet as it stands today. The house served as the focal point of the 3000 acre Tilton Ranch for over a century of cattle ranching in which it remained in the family until the purchase by the Santa Clara Valley Open Space Authority in 2021.

The future use of the house is undetermined but will include some degree of public access and employee use.

A house inspection was performed during the purchasing process of the home in which the following deficiencies for the structure were found (See Supplemental Conditions, Attachment 1 for house inspection report) This project will remedy the safety concerns found in the inspection report.

Tilton House Retrofit will include two component parts: (1) a seismic retrofit and upgrade and (2) a basement wall floor remedy and sump pump installation.

Phase 1: Seismic Retrofit and Upgrade/Repair work.

- Installation of foundation Shear Plates.
- Install blocking along parallel walls joist to joist & beam to beam.
- Install uplift straps.
- Install Pre-engineered hardware at Joists/Beams.
- Install shear wall on cripple walls.

Phase 2: Basement Wall/Floor Waterproofing, Sump Pump Installation.

- Repair vertical cracks in foundation.
- Chip, Brush Hammer, Grind and Repair Cellar Walls & Floor.
- Install Crystalline Waterproofing (two coats).
- Saw cut through floor and install sump pump.
- Install GFI Electrical Outlet to Panel-Single Circuit.
- Patch Concrete Floor.

*All necessary permits with Santa Clara County to be obtained by Contractor prior to start of work

Requirements

General Contractor License

Project Location

19665 Hale Ave
Morgan Hill, CA 95037

Project Schedule

Award of Contract is anticipated to occur on August 25, 2022 On site construction activities must be completed within a continuous period, and **project must be substantially complete no later than October 7, 2022**

B. BIDDING DOCUMENTS

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B.1 INVITATION TO BID

Notice Is Hereby Given that the Santa Clara Valley Open Space Authority (Authority) located at 33 Las Colinas Lane, San Jose, CA will receive bids electronically at the following email: proposals@openspaceauthority.org **on or before 3:00 p.m. on August 12, 2022** for the furnishing of all labor, materials and services required for the following designated scope of work:

1. Project:

Tilton Ranch House foundation repairs, waterproofing, drainage improvements and seismic retrofitting.

2. Scope of Work:

Project start up

Engineering

Permit coordination and fees

Basement wall/floor waterproofing and sump pump installation

Chip, bush hammer, grind and repair cellar walls and floor

Install two coats crystalline grout waterproofing

Saw cut through floor and install sump pump

Install GFI electrical outlet to panel single circuit

Patch concrete floor

Seismic retrofit and upgrade/repair work

Remove electrical/plumbing from cripple walls and replace after

Install foundation shear plates

Install blocking along parallel walls joist to joist and beam to beam

Install uplift straps

Install pre-engineered hardware and joists/beams

Install shear walls on cripple walls

Project finalization

Punch list, final inspections, debris haul off and recycle fees

3. Contractor & Sub-contractor Requirements

- Contractor: General Contractor License
- Sub-contractors: General Contractor License
- All contractors (Prime & Sub-) must be registered with California Department of Industrial Relations at the time the bid is submitted.

There will be a pre-bid site visit offered at 10:00 a.m. on July 26, 2022. ALL BIDDERS MUST ATTEND THE MEETING. Reservations are required: RSVP to Megan Robinson, at mrobinson@openspaceauthority.org or (408) 224-7476 by 5:00 p.m. on July 20, 2022 to receive directions to the meeting location and notice of any weather delays, safety protocols or changes.

Complete project information is contained within the project Bid Package, which is available online, at the office of the Authority, and at local Builders Exchanges. Please visit the Authority's Request for

Bids page at <https://www.openspaceauthority.org/public-information/public-notices.html>. For additional information, contact Megan Robinson Santa Clara Valley Open Space Authority, at mrobinson@openspaceauthority.org or (408) 224-7476.

B.2 INSTRUCTIONS TO BIDDERS

To be considered, bids must be made in accordance with these Instructions to Bidders.

1. CONTRACT DOCUMENT AVAILABILITY

Each bid proposal shall be made in accordance with the Bid Package documents on file, included in this package, and available for inspection by the end of day **on July 8, 2022** at the Authority website at <https://www.openspaceauthority.org/public-information/public-notices.html> and at the locations below:

| | | |
|--|---|--|
| Builders Exchange of Santa Clara County 400 Reed Street Santa Clara, CA 95050 408.727.4000 408.727.2779 fax www.bxscco.com/ | Peninsula Builders Exchange 282 Harbor Boulevard Belmont, CA 94002 650.591.4486 650.591.8108 fax www.constructionplans.org | Central Coast Builders Exchange 242 East Romie Lane Salinas, CA 93901 831.758.1624 831.758.6203 fax http://www.ccbabuilds.com/ |
|--|---|--|

Electronic copies of the Bid Package are available and may be downloaded from the following link: <https://www.openspaceauthority.org/public-information/public-notices.html>.

Bidders can also download and print/plot hard copies or order them through the Builders Exchanges listed above.

A hard copy of the Bid Package document may be reviewed **by appointment only** at the Authority Administrative Office located at 33 Las Colinas Lane, San Jose, CA 95119 by contacting Megan Robinson at 408-224-7476 or mrobinson@openspaceauthority.org. Please allow a minimum of 48 hours notice for reviewing the Bid Package.

2. MANDATORY PRE-BID MEETING INFORMATION

All bidders must RSVP for the mandatory pre-bid site visit by 5 p.m. on July 20, 2022.

Late RSVPs will not be accepted. As part of RSVP, bidders must provide name and email address of authorized representative and send to the attention of Megan Robinson:

Mrobinson@openspaceauthority.org to receive directions to the meeting location and notice of any weather delays, safety protocols or changes.

3. TENTATIVE PROJECT SCHEDULE

| | |
|--------------------|---|
| July 8, 2022 | Request for Bids issued |
| July 20, 2022 | Deadline for Mandatory RSVP by 5:00 p.m. |
| July 26, 2022 | Mandatory job site visit 10:00 a.m. – 11:00 a.m. |
| July 29, 2022 | 2:00 p.m. - Deadline for Bidders to pose questions |
| August 2, 2022 | 5:00 p.m. - Final Addendum to Bid Package issued |
| August 12, 2022 | 3:00 p.m. BID OPENING via ZOOM |
| August 25, 2022 | Authority Board of Directors Decision on Bids |
| August 26, 2022 | Written Notice of Award of Contract |
| September 9, 2022 | Deadline to submit Labor and Materials Payment Bond, Performance Bond, Proof of Insurance, and signed Agreement |
| September 14, 2022 | Pre-Construction Meeting and Written Notice to Proceed issued by Authority |
| October 7, 2022 | Project Completion & Close Out |

4. BID PROPOSAL GENERAL REQUIREMENTS

Prior to submitting his/her proposal, the Bidder shall thoroughly examine all Contract Documents and shall review pre-bid meeting materials concerning the project site to understand the site conditions and Scope of Work. Any questions, concerns, errors or ambiguities noted by the Bidder during said examination shall immediately be called to the attention of the Authority Representative prior to a submission of a bid. The Authority will issue addenda with interpretation of the cited questions, concern, error or ambiguity. No subsequent claim for extra work will be allowed on account of claimed misunderstanding of the meaning or intent of the Contract Documents, site conditions, or any other documents included in this Bid Package if the item occasioning the claim appeared in, or was inferable from, said documents or from site investigations mandated for bidding purposes.

Examination of Site. Attention is directed to Bidder's obligation to examine the Work site based on pre-bid digital materials provided; compare the site with the Plans and Specifications; determine any site variation that affects the Bid; and investigate the conditions of existing clearances, restrictions, or limitations that affect access to the Work. Bidder's failure to do any and all of the above shall not be a basis for claim of additional monies or extension of time.

Examination of Contract Documents. Bidder shall examine the Contract Documents to verify that there are no missing pages or sheets and shall obtain and examine any and all missing material prior to submitting the Bid.

Contract Documents Addenda. Explanations or interpretations will be made by Authority in the form of addenda to the documents and furnished to all bidders. **Oral explanations and interpretations made prior to the Bid opening shall not be binding.** All questions to the Authority must be made by the General Contractor. No questions from proposed Subcontractors will be received. Written addenda modifying Bid Package documents will be emailed, mailed or faxed to the Builders Exchanges listed

above and to all prospective Bidders that receive pre-bid meeting materials or otherwise submit a written request for notice of addenda.

Addenda will also be posted on the Authority's website at <https://www.openspaceauthority.org/public-information/public-notices.html>. The final Addendum will be furnished no less than 72 hours prior to the opening of Bid Proposals. **Addenda must be referred to by number and date on the Bid Proposal form.** It is the Bidder's obligation to consider all addenda before submitting a Bid Proposal.

Form and Delivery. The Bid Proposal must be submitted on the Bid Proposal form supplied with these instructions. Alterations to the printed text are not permitted. **Every blank on the enclosed Bid Proposal form should be filled out completely (or provided in another format). Either cross out or insert "N/A" in the blanks that are not applicable. Bid Proposals containing blanks may be disqualified, at the Authority's sole discretion.** The Bid Proposal must be delivered by email (with attachments, if any) to the following email address: proposals@openspaceauthority.org, with the following language in the subject line of the email "RFB-2022-09 Tilton House Retrofit"

Bid Proposals will be received only at the email address identified above. All Bid Proposals must be received by email by the Authority prior to 3:00 p.m. August 12, 2022. Bid Proposals will not be accepted via fax, mail, or by courier.

Bid Proposal Opening Information. Bid Proposals shall be opened at or around 3:00 p.m. on August 12, 2022 and interested bidders may virtually attend the bid opening. A Zoom meeting link will be provided, as indicated in B.3 of the Bid Package. Any Bid Proposal not emailed before the time set for the opening of bids will be unopened. Incomplete Bid Proposals may result in bid rejection, in Authority's sole discretion. Bid Proposals are expected to be presented to the Board of Directors of the Authority at their regular meeting on August 25, 2022. The Board will take formal action at that time to determine whether, and to whom, to award the contract.

5. BID SUBMITTAL

Bidders shall execute and submit the Bid Proposal form, found in Section C of the Bid Package. Each Bid Proposal must give the full business address of the Bidder, and be signed by him/her. Bid Proposals by corporations must identify the legal name of the corporation, be signed by an authorized officer of the corporation, and include a corporate resolution conferring such authorization. Bid Proposals by partnerships must furnish the full name of all partners and must be signed by one of the partners. After the signature, the Bid Proposal shall designate the position of the person signing.

The following forms are included in Section C of the Bid Package and are to be executed and submitted by Bidders with Bid. **Bid Proposals must include the following:**

- C.1: Bid Proposal
- C.2: List of Subcontractors
- C.3: Noncollusion Affidavit
- C.4: Bid Bond
- C.5: Proof of Public Works Contractor Registration

6. BID NON-REVOCABLE

In consideration of Authority's reliance on and investigation and consideration of the Bid Proposal of the undersigned, the undersigned agrees that such Bid shall be irrevocable and shall not be withdrawn for sixty (60) calendar days following the Bid opening even though an award is made to another Bidder. Thereafter, such Bid shall be automatically relieved.

7. BID GUARANTEE

No Bid will be considered unless accompanied by a guarantee in the amount of ten percent (10%) of the Total Base Bid, which shall be one of the following: (a) a Bid Bond supplied in the enclosed Bid Form written by an admitted surety satisfactory to the Authority in its sole discretion, (b) a certified or cashier's check made payable to the Authority, or (c) a cash deposit. In the event a successful Bidder fails to satisfy all conditions for accepting the award within the stated time limits, the Authority may declare the Bidder's Bid Guarantee in default. Bidder acknowledges that the amount of actual damages the Authority would suffer in such event is extremely difficult and impractical to determine at this time by reason of the uncertainties, lapse of time, expense and loss of likely bidders resulting from the probable need to re-advertise and call for new bids. Bidder agrees that if a default occurs, the amount of such Bid Guarantee shall be kept by the Authority as liquidated damages and agrees that the Authority may then award the work to any other bidder or may call for new bids. **All Bid Guarantees will be held until after an award is made, an Agreement entered into, and required bonds and proof of insurance provided for the Work, at which time they will be returned.**

8. NONCOLLUSION AFFIDAVIT

No bid will be considered unless accompanied by a fully executed Noncollusion Affidavit, which is supplied with the Bid Forms, Section C.3.

9. LICENSE REQUIREMENTS

Under California Business and Professions Code §7000, *et seq.*, commonly known as the "Contractor's State License Law", Contractor must possess an appropriate license that is current and valid at the commencement of and throughout the Term of the Agreement for the Work. The License required for this Agreement is General Contractors License All subcontractors must possess an appropriate license that is current and valid at the commencement of and throughout the Term of the Agreement.

10. REGISTRATION REQUIRED AS QUALIFICATION TO BID

Contractors and subcontractors listed on bid proposals must be registered with the California Department of Industrial Relations (DIR) in order to be eligible to work on public works projects (Cal. Lab. Code §§ 1725.5, 1771.1). Work performed on public works projects is subject to compliance monitoring and enforcement by the DIR. **All contractors (prime and sub-contractors) MUST be registered with DIR AT THE TIME THE BID IS SUBMITTED**, and contractors must retain current and valid Public Works Contractor Registration throughout the duration of the project. **Contractors must submit proof of Public Works Contractor Registration with their bid.** A contractor or

subcontractor shall not be qualified to bid on the Tilton House Retrofit unless currently registered and qualified to perform public works pursuant to Section 1725.5 of the Labor Code. Bids received from non-registered contractors will not be accepted. More information can be found at the following website: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

11. BOND AND INSURANCE REQUIREMENTS

Refer to Section D.2 General Condition of the Agreement.

12. PREVAILING WAGES

As required by law, the Contractor shall pay all workers California prevailing wages for each trade or classification on the job during the term of this project. These rates include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and apprenticeship or training. Prevailing wage information can be found at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

13. NON-DISCRIMINATION

The successful Bidder and its subcontractors must comply with all applicable state and federal equal employment opportunity and affirmative action laws throughout the term of the Contract. During and in relation to the performance of the Contract, Contractor agrees that Contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, physical or mental disability, medical condition, marital status, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender expression, sexual orientation, age (over 40), military and veteran status, or any other status not related to job duties and protected by law. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religious creed, national origin, ancestry, physical or mental disability, medical condition, marital status, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender expression, sexual orientation, age (over 40), military and veteran status, or any other status protected by law. Such action shall include, but not be limited to, the following: employment, terms, conditions or privileges of employment, promotion, demotion or transfer, recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Furthermore, Contractor shall include this requirement in any and all sub-contracts it enters into in any way related to this Agreement. Nothing in this section shall prohibit Contractor from applying a bona fide occupational qualification, or any other exception established by the California Fair Employment and Housing Act under Government Code § 12940.

14. BASIS OF CONTRACT AWARD – LOWEST RESPONSIBLE BIDDER

The Authority shall award the contract to the lowest responsible bidder submitting a responsive bid based on the information contained in the bid. The lowest monetary bid shall be based on the Total Base Bid.

Definitions:

- (a) The **Lowest Monetary Bid** is based on the Total Base Bid which is the contractor's Bid for all items listed in the Bid Proposal.
- (b) A **Responsive Bid** is one that conforms to the material terms of the bid package. Authority may contact firms to clarify information contained in their proposal. The Authority reserves the right to reject any or all proposals and to waive any conditions or formalities.

Every blank on the enclosed Bid Proposal form should be filled out completely (or provided in another format). Either cross out or insert "N/A" in the blanks that are not applicable. Bid Proposals containing blanks may be disqualified.

- (c) **Responsible Bidder.** Public Contract Code §1103 defines "responsible bidder" as "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract."

The Authority utilizes a range of factors to determine bidder responsibility and may require a responsible bidder to submit evidence demonstrating bidder responsibility, including without limitation: evidence of qualification and appropriate licensing of assigned personnel & listed subcontractors, ability to perform within the specified project schedule and to complete project by deadline of **October 7, 2022**, proposed fee and overall cost effectiveness of the bid, financial capacity to deliver the Project and financial responsibility, and may consider such evidence in determining bidder responsibility.

In addition, Authority will require bidder to submit a complete disclosure of bidder's staffing level, current and anticipated workload, and affirm that bidder can meet all project requirements and have the personnel and equipment to complete the project within the budget and schedule stipulated in the Contract Documents. If, Authority, in its review of bidder's past performance, finds documented evidence of inability to meet project schedule or cost requirements, Authority will have cause to reject the Bid. Refer to Item 16.

15. RIGHT TO REJECT BIDS

The Authority reserves the right to reject any or all Bid Proposals, to waive any informality, minor technical defect, or irregularity in Bid Proposals, and to accept or reject any items of a Bid Proposal. The Authority, at its discretion, may reject as incomplete any bid which is in any way conditional, includes exceptions, alterations or omissions, or includes reservations to the terms of the Bid Proposal form, drawings, specifications, or other contract documents. Authority will reject bids from any contractor for whom there is documented evidence of project schedule delays and cost overruns and / or documented inability to meet project performance requirements.

16. WITHDRAWAL OF BIDS

Bid Proposals may be withdrawn prior to the opening only by a signed, written notice received by the Authority Representative prior to the commencement of the Bid Proposal opening.

17. BID PROTESTS

A bidder who intends to protest the apparent low bid must submit the protest to the Authority project manager within five (5) working days after the Authority's issuance of the Memorandum of the Bid Opening, excluding Saturdays, Sundays and Authority holidays. The Memorandum of the Bid Opening is normally issued by Authority staff on the day of the Bid Opening to all bidders, identifying the apparent low bidder.

- a. Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.
- b. The bid protest must be a complete written statement detailing the basis for the protest and all supporting documentation, including reference to specific facts, portions of the bid or contract documents, or reference to specific statutes, that form the basis for the protest. The protest must be signed by the party filing the protest. Failure to give written notice by Close of Business on the fifth working day following issuance of the Memorandum of the Bid Opening shall waive the right to protest.
- c. Notification by personal delivery, overnight courier, email and/or facsimile is sufficient. If the written protest is sent by facsimile, Protesting Bidder must provide a FAX (facsimile) number and verify that the pages were all received by the Authority.
- d. The protest may be withdrawn at any time while under consideration by the Authority.
- e. Review by Authority
 - i. The Authority will notify the apparent low bidder of the bid protest.
 - ii. The Authority will afford the apparent low bidder the opportunity to submit a response to the written protest.
 - iii. The Authority will review timely protests prior to awarding the contract. The Authority is not be required to hold an administrative hearing to consider a bid protest, but may do so in its discretion, or if otherwise legally required. The Authority shall consider the merits of any timely protests and make a final determination thereon.
- f. The procedure and time limits set forth in this section 18 are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.
- g. The Authority reserves the right to award the contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a notice to proceed with the Work notwithstanding any pending or continuing challenge to its determination.

18. NOTICE OF AWARD

Immediately after Board action, the Authority Representative will notify the Contractor in writing of award of the contract. Contractor shall provide Authority Representative a Labor and Materials Payment Bond, Performance Bond, Proof of Insurance, and signed Agreement within ten (10) calendar days of Award of Contract.

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B.3 VIRTUAL BID OPENING INFORMATION

Virtual Bid Opening: The Santa Clara Valley Open Space Authority will be hosting a virtual bid opening via Zoom for the Tilton House Retrofit, scheduled to occur at or around 3PM on August 12, 2022.

Registration is required.

https://us02web.zoom.us/webinar/register/WN_TKq92x12RKCary7FIIgNRA

Zoom webinar details will automatically display in the web browser and be emailed upon successful registration.

If you do not receive an invitation after registering, please email proposals@openspaceauthority.org.

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C. BID FORMS

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C.1 BID PROPOSAL FORM

(To be executed by Bidder and Submitted)

Project Name: Tilton House Retrofit
Location: 19665 Hale Ave Morgan Hill, CA 95037

Scope of Work:

Project start up

Engineering
Permit coordination and fees

Basement wall/floor waterproofing and sump pump installation

Chip, bush hammer, grind and repair cellar walls and floor
Install two coats crystalline grout waterproofing
Saw cut through floor and install sump pump
Install GFI electrical outlet to panel single circuit
Patch concrete floor

Seismic retrofit and upgrade/repair work

Remove electrical/plumbing from cripple walls and replace after
Install foundation shear plates
Install blocking along parallel walls joist to joist and beam to beam
Install uplift straps
Install pre-engineered hardware and joists/beams
Install shear walls on cripple walls

Project finalization

Punch list, final inspections, debris haul off and recycle fees

Authority Representative: Megan Robinson Supervising Open Space Technician
Santa Clara Valley Open Space Authority
33 Las Colinas Lane
San Jose, CA 95119
(408) 224-7476

The undersigned has carefully examined the site conditions for the Work, received the required Pre-Bid Meeting materials, reviewed all documents in the Bid Package, including the Plans and Specifications, accepts all terms and conditions of the Agreement, and has reviewed the following Addenda (fill in blanks below as appropriate to the number of Addenda issued for the project):

Addendum No. _____, dated _____, 20_____,
Addendum No. _____, dated _____, 20_____,
Addendum No. _____, dated _____, 20_____.

1. BASE BID

Bid Proposal will be evaluated and awarded based on **Total Base Bid**. Authority may opt to award additional work, or accept deductive alternates based on unit pricing or breakdown submitted herein. Bidders proposed Duration for Completion shall be for Total Base Bid.

| Item No. | Item Description | Quantity | Unit | Unit Price | Extension |
|----------|---|----------|------|------------|-----------|
| A | Project start up | | | | |
| 1 | Professional Engineering | | EA | | |
| 2 | Permit coordination and permit fees | | EA | | |
| B | Basement wall floor waterproofing, sump pump installation | | | | |
| 1 | Repair vertical cracks in foundation | | EA | | |
| 2 | Chip, bush hammer, grind and repair cellar walls and floor | | EA | | |
| 3 | Install two coats of crystalline grout waterproofing | | EA | | |
| 4 | Saw cut through floor and install sump pump | | EA | | |
| 5 | Install GFI electric outlet to panel circuit | | EA | | |
| 6 | Patch concrete floor | | EA | | |
| C | Seismic retrofit and upgrade/repair work | | | | |
| 1 | Remove and replace electrical/plumbing from cripple walls | | EA | | |
| 2 | Install foundation sheer plates | | EA | | |
| 3 | Install blocking along parallel walls joist to joist and beam to beam | | EA | | |
| 4 | Install uplift straps | | EA | | |
| 5 | Install pre-engineered hardware and joist beams | | EA | | |
| 6 | Install sheer wall on cripple wall | | EA | | |

| | | | | | |
|----------|---|---------------------|----|--|--|
| D | Project completion | | EA | | |
| 1 | Punch list, final inspection, debris haul off, recycle fees | | EA | | |
| | TOTAL BASE BID | | \$ | | |
| | Proposed start date – pre-construction work: | _____ | | | |
| | Proposed start of on-site construction work: | _____ | | | |
| | Days to Complete Project: | _____ Calendar Days | | | |

2. DEDUCTIVE ALTERNATES.

| ALT | Description | Deduct amount |
|-----|-------------|---------------|
| 1 | | \$ |

3. ADDITIVE ALTERNATES.

| ALT | Description | Add amount |
|-----|-------------|------------|
| 1 | | \$ |

4. CURRENT WORKLOAD AND FINANCIAL CAPACITY. Contractor must provide adequate current workload and financial information to confirm Contractor’s financial ability to deliver this project.

(a)WORKLOAD – List the ALL current Projects & Value of the Current Work Backlog: (Attach additional pages if necessary)

| Project | Value of Unfinished Work | Percentage Complete |
|---------|--------------------------|---------------------|
| | | |
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| | | |

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|--|--|--|
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| | | |

(b) FINANCIAL – List Contractors’ Company yearly gross revenue for the last five years:

i) List the Company’s yearly gross revenue for the past 5 years.

2017 _____ 2018 _____ 2019 _____ 2020 _____
 2021 _____

ii) List the Company’s net income for the past 5 years.

2017 _____ 2018 _____ 2019 _____ 2020 _____
 2021 _____

iii) List the Company’s amount of re-invested income for the past 5 years.

2017 _____ 2018 _____ 2019 _____ 2020 _____
 2021 _____

5. LITIGATION.

If additional space is needed for explanations, please attach additional pages as necessary.

a) Has your company been assessed liquidated damages within the past 5 years?

No _____ Yes _____

If Yes,
 Where? _____
 Why? _____

b) Has your company been terminated for default or cause within the past 5 years?

No _____ Yes _____

If Yes,
 Where? _____
 Why? _____

c) Are there any judgements, claims, arbitration proceedings, or suits pending or

outstanding against your organization?

No _____ Yes _____

If Yes,
Where? _____
Why? _____

d) Has your organization filed any lawsuits, submitted claims, or been involved in any litigation with regard to your contract activity within the last five years

No _____ Yes _____

If Yes,
Where? _____
Why? _____

6. **EXPERIENCE.** List three recently (within last 5 years) completed jobs of comparable scope, the contract amount, names, and telephone numbers of contract officers. Use additional sheets as necessary.

Job/Project Name _____

Owner _____ Year _____ Contract Amt \$ _____

Contact _____ Phone _____

Project Description _____

Job/Project Name _____

Owner _____ Year _____ Contract Amt \$ _____

Contact _____ Phone _____

Project Description _____

Job/Project Name _____

Owner _____ Year _____ Contract Amt \$ _____

Contact _____ Phone _____

Project Description _____

5. **NONCOLLUSION CERTIFICATION.** The undersigned has executed and hereby submits the Noncollusion Affidavit (Form C.3), in accordance with Public Contracts Code Section 7106.

6. **BID GUARANTEE.** No Bid will be considered unless accompanied by a guarantee in the amount of ten percent (10%) of the Total Base Bid), which shall be either a **BID BOND** (Attachment 4) written by an admitted surety satisfactory to the Authority in its sole discretion, a certified or cashier's check made payable to the Authority, or a cash deposit. In the event a successful bidder fails to satisfy all conditions for accepting the award (i.e. executed Agreement, provision of required bonds and proof of insurance) within the stated time limits, the Authority may declare the bidder's Bid Guarantee in default. Bidder acknowledges that the amount of actual damages the Authority would suffer in such event is extremely difficult and impractical to determine at this time by reason of the uncertainties, lapse of time, expense and loss of likely bidders resulting from the probable need to re-advertise and call for new bids. Bidder agrees that the amount of such Bid Guarantee shall be kept by the Authority as liquidated damages and agrees that the Authority may then award the work to any other bidder or may call for new bids. All Bid Guarantees will be held until after an award is made, an Agreement entered into, and required bonds and proof of insurance provided, at which time they will be returned.

7. **DISCLOSURE.** The names of all persons financially interested in this Bid Proposal are as follows:

Bidder, or any partner of Bidder, is a corporation, provide the legal name of the corporation, the state of its incorporation and the name and address of the President and of the Secretary. If Bidder is a partnership, provide name of the firm and names and addresses of all individual co-partners. Use additional sheets as necessary. If Bidder is an individual, provide the first and last name and address.

Name of Corporation: _____

State of Incorporation: _____

Name of Officer/Shareholder Title Address

Name of Bidder(s)/Partner(s) (If not a corporation)

8. **WITHDRAWAL OF BIDS.** Bids may be withdrawn prior to the opening of bids only by a signed, written notice received by the Authority Representative prior to the commencement of the bid opening. In consideration of Authority's reliance on and consideration of this Bid Proposal, the undersigned agrees that such Bid Proposal shall be irrevocable upon opening and shall not be withdrawn for sixty (60) calendar days following the bid opening even though award may be made to another bidder. Thereafter, such bid shall be automatically relieved.

I make the above Bid and declare under penalty of perjury that the statements made in this Bid Proposal are true and correct.

FULLY EXECUTED at _____,
City State

on _____,
Month Day Year

Signature¹ _____ Title _____

Name (please type or print) _____

Federal Employer I.D. Number _____

License Type _____

License Number _____ Expiration Date _____

DIR Registration Number _____

Name of Firm _____

Mailing Address _____

City _____ State _____ Zip _____

Phone (Bus) _____ Phone (Cell) _____

Email _____

¹ An authorized person for the Bidder must sign this Bid Proposal. If the Bidder is a partnership, a general partner must sign. If the Bidder is a corporation, an authorized officer of the corporation must sign and a corporate resolution conferring such authority must be provided.

C.2 LIST OF SUBCONTRACTORS
(To be executed by Bidder and Submitted with Bid)

Contractor must set forth the name, address, phone number, type and cost of work, and proof of required license for each subcontractor who will perform work or render services in any amount exceeding one-half percent (1/2%) of the total bid according to provisions of the California Public Contract Code §4100 through §4113. Each subcontractor must be licensed by the State of California Department of Consumer Affairs for the portion of work they perform in accordance with Contractor's License Law. Please attach as many sheets as necessary.

Company Name:

Contact:

Address:

Phone Number:

Type of Work:

Cost of Work:

Required License:

DIR Registration Number:

Company Name:

Contact:

Address:

Phone Number:

Type of Work:

Cost of Work:

Required License:

DIR Registration Number:

Company Name:

Contact:

Address:

Phone Number:

Type of Work:

Cost of Work:

Required License:

DIR Registration Number:

C.3 NONCOLLUSION AFFIDAVIT

NONCOLLUSION DECLARATION TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

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

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

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

(Page left intentionally blank)

C.4 BID BOND

(Note: Bidder must use this form if Bid Guarantee is a Bond)

KNOW ALL PERSONS BY THESE PRESENTS THAT [name of Bidder] (hereinafter Principal), as Principal, and [name of Surety], a corporation organized and doing business under and by virtue of the laws of the State of _____ and duly licensed for the purpose of making, guarantying or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as Surety, are held and firmly bound unto the Santa Clara Valley Open Space Authority, a California Special Authority, (hereinafter called the Obligee) in the just and full sum of _____ Dollars (\$ _____) _____ lawful money of the United States of America, for the payment of which we hereby bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS, the Principal is about to hand in to the Obligee a Bid for the project known as **Tilton House Retrofit** in accordance with the Contract Documents filed in the office of the Obligee and under the notice inviting proposals therefor.

NOW, THEREFORE, if the Bid as submitted by said Principal shall be accepted, and the contract for such work or supplies be awarded to the Principal, and the said Principal shall fail, neglect or refuse to enter into a contract to perform said work or deliver said supplies, and furnish good and sufficient bond and proof of insurance therefore, then the amount of this bond shall be declared to be forfeited to the Obligee, Santa Clara Valley Open Space Authority.

IN WITNESS WHEREOF, Principal and Surety have caused these presents to be duly signed and sealed this day of _____, 2022.

Signature of Principal Signature of Surety

Attorney-in-Fact
State of California,

County of _____)

On _____ before me, _____
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Seal

(Page left intentionally blank)

C.5 PROOF OF PUBLIC WORKS CONTRACTOR REGISTRATION

Attach proof of Contractor and subcontractors' current and valid Department of Industrial Relations Public Works Contractor Registration (Lab. Code § 1725.5)

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D. AGREEMENT FORMS

Notice to Bidders:

Documents in the following section are not to be submitted with Bid Proposal. They will be signed and submitted at time of Award of Contract.

(Page left intentionally blank)



D.1 AGREEMENT

Tilton House Retrofit

19655 Hale Ave Morgan Hill CA 95037

July 8, 2022

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AGREEMENT

1. **Project Name:** Tilton House Retrofit

2. **Parties.**

Authority: Santa Clara Valley Open Space Authority
Attn: Megan Robinson Supervising Open Space Technician
33 Las Colinas Lane
San Jose, CA 95119
(408) 224-7476
(408) 224-7548 (facsimile)

Contractor: _____

3. **Scope of Work.**

Scope of Work:

Project start up

Engineering
Permit coordination and fees

Basement wall/floor waterproofing and sump pump installation

Chip, bush hammer, grind and repair cellar walls and floor
Install two coats crystalline grout waterproofing
Saw cut through floor and install sump pump
Install GFI electrical outlet to panel single circuit
Patch concrete floor

Seismic retrofit and upgrade/repair work

Remove electrical/plumbing from cripple walls and replace after
Install foundation shear plates
Install blocking along parallel walls joist to joist and beam to beam
Install uplift straps
Install pre-engineered hardware and joists/beams
Install shear walls on cripple walls

Project finalization

Punch list, final inspections, debris haul off and recycle fees

(a) “*Not in Contract*” (*N.I.C.*) *Items*. Any portions of the Project identified by the notation “N.I.C.” on Drawings, Maps, Supplemental Conditions and Specifications will be performed before or after Contractor’s Work and are not part of the Work.

4. **Documents, Materials and Records the Property of Authority.**

All documents, materials, and records of a finished nature, including but not limited to final plans, specifications, video or audio tapes, photographs, computer data, software, reports, maps, electronic files and films, and any final revisions, prepared or obtained in the performance of this Agreement (collectively “work product”), shall be delivered to and become the property of Authority without restriction or limitation on their use. All documents and materials of a preliminary nature, including but not limited to notes, sketches, preliminary plans, computations and other data, and any other material referenced in this section, or prepared or obtained in the performance of this Agreement, shall be made available, upon request, to Authority at no additional charge and without restriction or limitation on their use. Upon Authority’s request, Contractor shall execute appropriate documents to assign to the District the copyright or trademark to work product created pursuant to this Agreement. Contractor shall return all Authority’s property in Contractor’s control or possession immediately upon termination.

5. **Term.**

The Term of this Agreement shall commence on the date of execution hereof by Authority’s General Manager and shall end upon the filing of the *Notice of Completion* by Authority Representative as more specifically set forth in the General Conditions, attached hereto and incorporated herein as **D.2**, and in the Supplemental Conditions, attached hereto and incorporated herein as **D.3**.

6. **Review Of Plans And Specifications.**

Contractor has reviewed and carefully examined the engineering plans and specifications prior to submission of its bid. And any errors or omission in the engineering plans, if any, have been reported to Authority prior to submissions of Contractor’s bid.

Submission of a bid by Contractor shall constitute acknowledgement that Contractor has relied and is relying on its own examination of the site of the work, access to the site, all other data, matters, and things requisite to the fulfillment of the work, including but not limited to the availability of labor and materials.

7. **Contract Price.**

As full compensation for the Work, Authority agrees to pay Contractor the sum set forth in Contractor’s Bid Proposal attached hereto and incorporated herein as **Exhibit A**. Contractor agrees to delete or add Work tasks not covered by the provisions thereof, either under provisions for “ADD OR DEDUCT ALTERNATES” or for “UNIT PRICES,” pursuant to the methods otherwise provided herein for Change Orders.

8. **Cash Allowances.**

Contractor declares that the Contract price includes all expenses (including permit fees) and profit. Contractor shall make no demand for additional expenses and/or profit for work in this Contract.

9. **Licensing.**

Under California Business and Professions Code §7000, et seq., commonly known as the “Contractors’ State License Law”, Contractor must possess an appropriate license that is current and valid at the commencement of and throughout the Term of this Agreement. The Licenses required by this Agreement: C-13 Fencing Contractor License and/or Class B – General Building Contractor. A copy of Contractor’s License is attached hereto as Exhibit XX.

10. **Standard Of Performance.**

Contractor shall accomplish all results required pursuant to this Contract in the manner and according to the standards observed by a competent practitioner of Contractor’s profession in the Authority’s geographical area. All instruments of service of whatsoever nature which Contractor delivers to Authority pursuant to this Contract shall be prepared in a substantial, first class manner and conform to the standards of quality normally observed by a person practicing in Contractor’s profession. Contractor warrants to Authority that the title to the materials, supplies or equipment covered by the Contract, when delivered to Authority, is free from all liens and encumbrances. Contractor also warrants that all materials, supplies and products furnished meet the requirements and conditions of the Contract and plans and specifications, and are fit for the purpose intended. In accepting warranties and materials or supplies to be manufactured or assembled pursuant to this Contract, Authority does not waive any warranty, either express or implied, as provided by California law. Work and materials not meeting standard of performance may be rejected. Contractor shall remedy or remove and replace at its own expense and in an acceptable manner all work that has been rejected.

11. **Domestic Materials.**

In accordance with the provisions of California Government Code § 4300 *et seq.*, only such unmanufactured materials as have been produced in the United States, and only such manufactured materials as have been manufactured in the United States, substantially all from materials produced in the United States, shall be used in the performance of the Contract. Pursuant to California Government Code § 4304, any person who fails to comply with this section of the contract cannot be awarded any contract for construction, alteration or repair of public works or for the purchase of materials for public use for a period of three (3) years from the date of the violation.

12. **Laws Applicable To Authority Incorporated.**

(a) This Contract is subject to all Federal, State and local laws, regulations, ordinances, and governing codes, controlling, affecting, or enacted by the Santa Clara Valley Open Space Authority. All such laws, regulations, ordinances, and codes are made a part of this Contract as if set forth fully herein.

(b) In compliance with California Government Code §4552 and California Public

Contract Code §7103.5, the text of those codes are herein reproduced in full:

Government Code §4552. Submission of bids to public purchasing body; agreement to assign

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body 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 under the Cartwright Act (Chapter 2 commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

Public Contract Code §7103.5(b). Assignment by contractor to awarding body of rights under federal law arising from purchases under public works contracts

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 awarding body 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 under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgement by the parties.

13. Employment Practices.

During the performance of this Agreement, Contractor agrees that Contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, physical or mental disability, medical condition, marital status, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender identity, gender expression, sexual orientation, age (over 40), military and veteran status, or any other or any other non-merit factor unrelated to job duties and protected by law. Contractor shall not discriminate on the basis of the above characteristics against any employee or applicant for employment who has, perceives he or she has, or is associated with a person who has, or is perceived to have any of the above characteristics. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religious creed, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender identity, gender expression, sexual orientation, age (over 40), military and veteran status, or any other status protected by law. Such action shall include, but not be limited to, the following: employment, terms, conditions or privileges of employment, promotion, demotion or transfer, recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

14. Contractor as Independent Contractor.

At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of the Authority. The Authority shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement; however, the Authority shall not have the right to control the means by which Contractor accomplishes the results required under this Agreement. Contractor is responsible for all insurance and all taxes, charges, fees, benefits or contributions required to be paid or withheld on behalf of Contractor, including, but not limited to, compliance with social security, withholding, and all other regulations governing such matters. Contractor is not entitled to any employee benefits. Contractor shall exonerate, indemnify, defend, and hold harmless the Authority (which shall include, without limitation, its officers, agents, employees and volunteers) from and against any and all federal, state, and local taxes, charges, fees, or contributions required to be paid with respect to Contractor and Contractor's officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

15. Assignment.

Contractor shall not assign its rights or obligations under this Contract without the prior written consent of Authority. Contractor shall not assign any monies due Contractor without the written consent of Authority. Any assignment or delegation without the written consent of the other party shall be void.

16. Taxes.

Contractor agrees and states that all taxes arising incidental to this Contract shall be paid in a timely manner by Contractor and are included in the Contract price.

17. Federal Manufacturer's Excise Tax.

Authority is exempt from Federal Manufacturer's Excise Tax. The manufacturers of items subject to such tax are entitled to a refund or credit for that tax on presentation of Authority's exemption certificate for items furnished exclusively to Authority. Contractor shall not be entitled to claim any additional monies for taxes paid where this exemption is available.

18. Notice.

Any notice required or desired to be given under this Agreement shall be in writing and shall be personally served or, in lieu of personal service, may be given by (i) depositing such notice in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to a party at its address set forth above; (ii) transmitting such notice by means of Federal Express or similar overnight commercial courier ("Courier"), postage paid and addressed to the other at its street address set forth below; (iii) transmitting the same by facsimile, in which case notice shall be deemed delivered upon confirmation of receipt by the sending facsimile machine's acknowledgment of such with date and time printout; or (iv) by personal delivery. Any notice given by Courier shall be deemed given on the date shown on the receipt for acceptance or rejection of the notice. Either party may, by written notice, change the address to which notices addressed to it shall thereafter be sent.

19. **Waiver.**

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

20. **Governing Law and Venue.**

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Santa Clara, State of California.

21. **Entire Agreement.**

This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior, contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of all the parties.

22. **Conflict of Interest.**

Contractor warrants that it presently does not have and will not acquire any direct or indirect financial interest which would conflict with its performance of this Agreement.

23. **Captions.**

Section headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement.

24. **Severability.**

The unenforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.

25. **Records.**

Authority representatives shall have the right to review and inspect any record of the Contractor related to this Contract during normal business hours at the location where such records are maintained. Contractor shall retain and dispose of records as required by law and Authority records retention policies.

26. **Miscellaneous.**

- (a) Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.
- (b) Any executed copy of this Agreement shall be deemed an original for all purposes.
- (c) This Agreement may be executed in counterparts, which counterparts shall together constitute one agreement if signed by both parties.
- (d) When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation, trust or joint venture, and the singular includes the plural.

- (e) The terms “shall,” “will”, “must” and “agree” are mandatory. The term “may” is permissive.
- (f) When a party is required to do something by this Agreement, it shall do so at its sole cost and expense without right to reimbursement from the other party unless specific provision is made otherwise.
- (g) Where any party is obligated not to perform any act, such party is also obligated to restrain any others within its control from performing such act, including its agents, invitees, contractors, subcontractors and employees.
- (h) No responsibility either direct or implied will be assumed by Authority for omissions or duplications to Contractor or any subcontractors due to real or alleged error in arrangement of material in the Contract Documents.
- (i) This Agreement includes all Contract Documents as the term is defined in Section 2.1 of the General Conditions of the Agreement (D.2).

Contractor

Name and Title (please type or print)

Signature

Date

Federal Employer I.D. Number

License Number

Expiration Date

Fully executed at San Jose, California for the
Santa Clara Valley Open Space Authority

by: Andrea Mackenzie, General Manager

Date

Attest:

Kellie Guerra, Authority Clerk

Approved as to form:

William Parkin, General Counsel

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D.2 GENERAL CONDITIONS of the Agreement

Tilton House Retrofit

19665 Hale Ave Morgan Hill, CA 95037

July 8, 2022

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**GENERAL CONDITIONS
Of the Agreement**

Tilton House Retrofit

TABLE OF CONTENTS

ARTICLE ONE – DEFINED TERMS

1.1 Defined Terms..... 7

ARTICLE TWO – CONTRACT DOCUMENTS

2.1 Contract Documents Defined 9
2.2 Intent of Contract Documents 9
2.3 General Specifications 9
2.4 Discrepancies Errors and Omissions 9
2.5 Division of Work 10
2.6 Clarifications 10
2.7 “For Construction” Contract Documents 10
2.8 Ownership and Use of Documents 10

ARTICLE THREE – AUTHORITY GENERAL REQUIREMENTS

3.1 Authority of the Authority Representative11
3.2 Separate Contracts 11
3.3 Boundaries 11
3.4 Inspection 11
3.5 Work, Examination, Re-examination 12
3.6 Correction of Work 12
3.7 Testing / Inspection Services 12

ARTICLE FOUR – CONTRACTOR’S PERFORMANCE OF THE WORK

4.1 General Obligations of Contractor13
4.2 Examination of Site and Contract Documents 14
4.3 Permits and Regulations 15
4.4 Subcontractors 15
4.5 Joining, Cutting, Patching and Digging: Defects16

ARTICLE FOUR – CONT.

4.6 Use of Premises17
4.7 Project Cleanliness 17
4.8 As-Built Document 18
4.9 Water and Air Pollution; Environmental Protection; Erosion Control 18
4.10 Protection of Historic Resources and Human Remains19
4.11 Hazardous Materials.....19
4.12 Safety 20
4.13 Time Limits on Work 22
4.14 Employees, Work Day, Apprenticeship, Non-Discrimination and Wages 23
4.15 Work Schedule25
4.16 Submittals 26
4.17 Materials 27
4.18 Public Convenience 28
4.19 Fire Hazards and Prevention29
4.20 Emergencies 29
4.21 Utilities29
4.22 Protection of Work and Property 30

ARTICLE FIVE– INSURANCE, BONDS AND INDEMNIFICATIONS

5.1 General Insurance Requirements30
5.2 Specific Insurance Requirements31
5.3 Guarantee Bonds31
5.4 Contractor’s Indemnification of Authority31
5.5 Assumption of Risk33

ARTICLE SIX– PAYMENT AND COMPLETION

6.1 Schedule of Values33
6.2 Application for Payment33
6.3 Claims36

ARTICLE SIX– PAYMENT AND COMPLETION CONT.

6.4 Final Inspection and Acceptance of the Work36
6.5 Guarantee: Correction of Work after Final Payment37

ARTICLE SEVEN – CHANGES IN THE WORK

7.1 Change Orders38
7.2 Changes in Character of Work39
7.3 Extra Work40
7.4 Contract Price Adjustments40
7.5 Contract Time Adjustments42
7.6 Claims for Extras.....42

ARTICLE EIGHT – TERMINATION OF THE CONTRACT

8.1 Termination for Default and Acts of Nature42
8.2 Contractor’s Abandonment43
8.3 Abandonment43

EXHIBITS

- 1. Labor & Material Payment Bond
- 2. Performance Bond
- 3. Workers Compensation Certificate
- 4. Proposed Change Order Request Template
- 5. Change Order Template

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**GENERAL CONDITIONS
Of the Agreement**

Tilton House Retrofit

ARTICLE ONE

DEFINED TERMS

1.1 Defined terms. For the purposes of the Contract Documents, the following terms shall have the meanings set forth below.

Addendum: A document containing supplementary details, instructions or information issued by Authority prior to execution of the Agreement, which modifies, clarifies, supersedes or supplements one or more of the other Contract Documents.

Agreement: The Agreement between the Authority and the Contractor to which these General Conditions are attached.

Clarification: A document containing supplementary details, instructions or information, issued by the Authority after execution of the Agreement which modifies, clarifies, supersedes or supplements one or more of the other Contract Documents. Clarifications shall not give rise to a change in the Contract Price or Contract Time.

Contractor shall mean person, persons, firm, partnership, corporation, and assignees, licensed by the State of California, Department of Consumer's Affairs, named as such in the Agreement.

Authority: Shall mean the Santa Clara County Open Space Authority.

Authority Representative: Designated person authorized to act on behalf of the Authority to the extent provided in the Contract documents or as otherwise specified by the Authority in writing.

Drawings: The graphic and pictorial representations of the design, location, character, dimensions and details of the Work, generally including plans, elevations, sections details, schedules and diagrams, as identified in the Agreement and as modified pursuant to Addenda, Clarifications, and Change Orders.

Day: shall mean calendar day, including Saturday, Sunday, Legal Holidays or Inclement Condition Days.

Inclement Condition Day: shall mean any day that, because of weather or site conditions, Contractor cannot work with seventy-five percent (75%) or more of Contractor's labor and equipment force for at least five (5) hours. In the event of inclement weather, Contractor shall be prepared, at the direction of Authority Representative, to secure the Project site and the Field Office building (if one is used for the Project), erect all necessary erosion control and water protection measures including covering all exposed soils, stockpiles, and building material if total rainfall exceeds 0.5 inch of rain within a 24-hour period.

Legal Holidays: for the purposes of this Agreement are New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.

Notice to Proceed: The written notice issued by Authority directing Contractor to commence performance for the Work. The commencement date set forth in the Notice to Proceed shall be the date from which the Substantial Completion and Contract Time are calculated.

Subcontractor: The person, firm, partnership, corporation, and assignees, licensed by the State of California, Department of Consumer's Affairs, listed in Form C.2 of Contractor's Bid Proposal, and having a binding agreement with Contractor to perform specific portions of the Work. Definition extends to all second and third tier subcontractors.

Substantial Completion: The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. At this stage, the Contractor, Authority and Architect/Engineer shall complete a project walk and prepare a punchlist of all corrective work that must be completed for Owner to accept and occupy the Work. The date of Substantial Completion is when the one-year warranty period commences, and is the date upon which the Authority assumes responsibility for the designated portion of the Work that is deemed substantially complete.

Work: The term "Work" shall mean and include all excavation, grading, remediation, construction and other activities described in the Contract Documents or reasonably inferable from the Contract Documents as necessary to produce the intended results and includes all labor, materials, tools, equipment, supervision, coordination, and all other items necessary for the full and proper execution thereof.

Working Day or Work Day: shall mean any day, except Saturday, Sunday, Legal Holidays or Inclement Condition Days. Authority Representative shall be the sole judge of a Working Day.

ARTICLE TWO

CONTRACT DOCUMENTS

- 2.1 Contract Documents Defined.** Contract Documents shall mean these General Conditions, Special Conditions, Supplemental Conditions, the Agreement with all Exhibits, and the project Specifications, Drawings, and all Addenda, Clarifications and Modifications incorporated herein by reference or listed in the Agreement, which together constitute the "Contract Documents" and represent the entire, integrated Agreement as to the Work contracted for between the parties. It supersedes all prior negotiations, representations or agreements, whether written or oral.
- 2.2 Intent Of Contract Documents.** The intent of the Contract Documents is for the Contractor to provide, for not more than the contract Sum, all labor, supervision, materials, water, power, fuel, tools, plant, equipment, transportation and other items as may be necessary or appropriate for proper execution of the Work (except to the extent expressly provided otherwise in the Contract Documents). The Contract Documents are complementary, and what is shown within one shall be as binding as if shown within all. For example, anything referenced in the Specifications and not shown on the Drawings, or shown in the Drawings and not referenced in the Specifications, shall be of like effect as if shown or referenced in both.
- 2.3 General Specifications.** In the event the Specifications or any directions given by the Authority Representative pursuant to the Contract Documents require materials or other Work for which no detailed specifications are provided, the following general specifications shall apply:
- The materials shall conform to the usual standards for first-class materials or article of the kind required with due consideration of the use to which they are to be put. Work shall conform to the usual standards for first-class work of the kind required, and shall be subject to the approval of the Authority Representative.
- 2.3.1 Specification References.** Any material or method specified by reference to the number, symbol, or title of a specific standard such as a Commercial Standard, a Federal Specification, a trade association standard or similar standards, shall comply with the requirements in the latest revision thereof, including any amendments or supplements thereto in effect on the date of Request for Bids, except as limited as to type, class, or grade or modified in such reference.
- 2.4 Discrepancies, Errors And Omissions.** The Contract Documents are not complete in every detail and in some cases may show only the purpose and intent. Contractor shall not avail itself of any manifest error, omission, discrepancy or ambiguity in the Contract Documents, or in the instructions given or in work provided by others. Contractor shall

notify the Authority Representative in writing immediately upon the discovery of any such error, omission, discrepancy or ambiguity and the Authority Representative shall address the matter within a reasonable period of time, issuing a Clarification or Modification if appropriate. In the event of a discrepancy between documents, the most restrictive requirement shall govern. If Contractor proceeds with any Work-related activity involving an error, omission, discrepancy or ambiguity which Contractor knew of or reasonably should have known of, without first giving such notice, Contractor shall be responsible for all defects, delays, damages, and additional cost to Authority arising from or relating thereto, including without limitation all costs of correction, inspection testing, supervision and Project administration.

- 2.5 Division Of Work.** The organization of the Specifications and arrangement of the Drawings shall not control Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade. Similarly, any table of contents, titles and headings contained in the Contract Documents are provided solely to facilitate reference to various provisions of the Contract Documents and shall in no way affect or limit the interpretations of the provisions to which they refer, or be construed as a proposed segregation of the various units of the Work. Contractor shall arrange, divide and delegate its Work in conformance with sound trade practices, and shall be solely responsible for the division of the Work and establishment of subcontractor limits and scopes of work.
- 2.6 Clarifications.** The Authority Representative may issue Clarifications to Contractor as necessary or desirable to clarify requirements of the Contract Documents. Contractor shall request a clarification from the Authority Representative through a Request for Information (RFI) if Contractor or any Subcontractor believes that (a) any Work is not sufficiently detailed or explained in the Drawings and Specifications, (b) there is a conflict between the Drawings and Specifications, (c) there is a conflict between the Drawings and/or Specifications and field conditions, or (d) any other questions arise that require direction from the Authority Representative. Prior to submitting and RFI, Contractor shall complete a thorough review of the Contract Documents and inspect the Site to confirm that the grounds for an RFI exist.
- 2.7 “For Construction” Contract Documents.** Authority shall furnish Contractor with one hard copy of the final “For Construction” Contract Documents, including Plans, Specifications and any Addenda.
- 2.8 Ownership And Use Of Documents.** All Plans, Specifications, Models, and Samples furnished to Contractor are the property of Authority. Plans, Specifications, Models, and Samples are not to be used by Contractor on any other work. All such Plans, Specifications, Models, and Samples shall be returned to Authority upon request and in any event at the end of the Term unless otherwise directed by Authority Representative.

ARTICLE THREE

AUTHORITY'S GENERAL REQUIREMENTS

- 3.1 Authority Of Authority Representative.** During the term of this Agreement, Authority Representative or his or her designee is fully authorized to represent Authority in all contractual matters. Authority Representative shall make all decisions as to the intent of the Plans and Specifications, the amount and quality of work performed and materials furnished, the manner and rate of work performed, the fulfillment of the Contract, and any compensation due Contractor. Disputes or claims between Contractor and Authority arising from this Contract shall be governed by the claims resolution procedures of California Public Contract Code Section 20104 *et seq.*. Authority Representative has the authority to reject any Work or material that does not conform with Contract requirements and to stop Work deemed necessary for such rejection and without cost to Authority. Authority Representative is authorized to require Contractor to immediately correct any unsafe or unsuitable condition to Authority Representative's satisfaction at Contractor's expense. Authority Representative may furnish additional instructions needed for the proper execution of the Work. Authority Representative has the authority to require minor field adjustments in the Work not involving extra cost. Contractor shall not relocate Contract items without Authority Representative's written approval. The Authority Representative for this Agreement is the person designated above unless Contractor is provided with oral or written notice of the designation of another person.
- 3.2 Separate Contracts.** Authority reserves the right to let other contracts in connection with this Project. Contractor shall afford other contractors reasonable opportunity for storage of their materials, access to their work sites and execution of their work and shall properly connect and coordinate Work under this Contract with their works. Any dispute arising under the obligations imposed by this paragraph shall be resolved as provided for herein.
- 3.3 Boundaries.** Authority shall establish Project boundaries in the field whether or not shown on the Plans.
- 3.4 Inspection.**
- 3.4.1 *Authority Access.* Authority and its duly authorized agent(s) shall have unrestricted access to the Work whether it is in preparation or in progress. Authority and its duly authorized agent(s) shall at all times reserve the right to inspect and/or test for compliance with the Contract Documents any or all materials and/or work provided to or installed in the Work. Contractor shall provide safe and proper facilities for access and inspection.
- 3.4.2 *Required Inspections and Testing.* If any law, regulation, ordinance, public authority, specification or Authority Representative requires any part of the Work to be specially inspected or tested, Contractor shall notify Authority Representative three (3) working days prior to the Work's readiness for testing or inspection.
- 3.4.3 *Inspection of Phases.* Contractor shall notify Authority Representative two (2) working days in advance of each phase set forth in the Plans or Specifications for

inspection.

3.5 Work, Examination; Re-examination. Authority Representative may order and Contractor shall comply with the examination or re-examination of work. Contractor shall not cause any work to be covered or enclosed without approval of Authority Representative. Any work enclosed or covered before approval shall be uncovered. After inspection Contractor shall restore all work to its original condition at Contractor's expense.

3.6 Correction Of Work.

3.6.1 *Removal; Replacement.* Contractor shall promptly remove from the site all materials or Work rejected by Authority Representative. Contractor shall promptly replace material or Work, without cost or expense to Authority, and shall make good any Work destroyed or damaged by removal of condemned Work.

3.6.2 *Authority Right to Remove Material; Deductions and Accounting.* If Contractor does not remove rejected Work or materials within a time prescribed by Authority Representative, Authority may remove and store salvageable Work or materials at Contractor's expense. If Contractor does not pay the expense of removal within five (5) calendar days, Authority may, after providing ten (10) days prior written notice, sell Work or materials at auction or private sale. Authority shall give an accounting of the net proceeds from the sale after deducting all costs and expenses including auction or sale expenses.

3.6.3 *Deductions For Uncorrected Work.* If Authority determines not to require corrective Work, the Contract price shall be reduced by an amount equal to the estimated cost of making the Work conform to the Contract Documents as determined by Authority Representative, plus an administrative fee of fifteen percent (15%) of that cost.

3.7 Testing/Inspection Services.

3.7.1 *Authority.* Authority may require that specialized test(s) and/or inspection(s) of the Work be performed by an independent testing/inspecting service of its choice. Authority shall pay for initial specialized tests or inspections. Contractor shall pay for any re-test or re-inspection that is thereafter required as a result of a failed test or inspection due to nonconformity with Contract requirements.

3.7.2 *Contractor.* When Contractor is required by Contract or regulation of government authority having jurisdiction over the Work to provide certification by an independent testing/inspection service, Contractor shall be responsible for, and promptly pay, all costs thereof. Authority Representative must approve any independent testing/inspection service proposed for use by Contractor prior to employment of such service. All tests required by the Contract shall be made promptly so as not to delay the Work. Contractor shall furnish three (3) copies of all resulting testing/inspection reports.

ARTICLE FOUR

CONTRACTOR'S PERFORMANCE OF THE WORK

4.1 General Obligations Of Contractor.

4.1.1 Contractor shall complete all work in accordance with the Contract Documents and any subsequently executed Change Orders and written Field Directives. Contractor shall do all work and furnish all labor, materials, tools, appliances, equipment, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, all other facilities, and incidentals necessary to furnish, perform, test, start-up, and complete the Work within the time set forth in the Agreement, except as otherwise specifically expressed within the Contract Documents.

4.1.2 The right of general direction by Authority does not render Contractor an agent or employee of Authority; Contractor understands and acknowledges that Contractor's liability for any damages to persons or to public or private property arising from Contractor's execution of the Work shall not be lessened due to Authority general direction to Contractor.

4.1.3 Neither the presence of any Authority officer, director, agent, employee, consultant, or independent testing/inspection service hired by Authority, nor their general review or approval of any work shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

4.1.4 *Superintendent.* Contractor shall submit the name, and the qualification resume of the competent superintendent and Project Manager who shall have the authority to represent and act for Contractor at the pre-construction meeting. The superintendent (or a competent assistant previously approved by Authority Representative) shall be on the Project site at all times while Work is in progress. The superintendent shall be changed only upon written consent of Authority Representative or if the superintendent ceases to be in Contractor's employ. Any replacement must be approved by Authority Representative. The superintendent, Project Manager and assistant shall be able to communicate with Authority Representative in English, as necessary for the safe and efficient execution of the Work.

4.1.5 *Pre-construction Meeting.* A pre-construction meeting attended by Contractor, Authority Representative, and others as appropriate, will be held within five (5) calendar days of *Notice of Award* to discuss the Work. All required documents, requests, and proposals must be submitted at or before this meeting.

4.1.6 *Review Work Site and Contract Documents.* Upon award of contract, Contractor shall again carefully compare work site conditions, all drawings, specifications, and other instructions and shall promptly report in writing to Authority Representative any error, inconsistency or omission at the pre-construction meeting.

4.1.7 *Monuments.* Contractor shall take reasonable measures to prevent dislocation or destruction of monuments before Contractor starts work. Contractor must protect benchmarks monuments and reference points from displacement or damage.

4.1.8 *Plans At Work Site.* Contractor shall at all times keep a complete and accurate set of the Agreement, and all Plans, Specifications, Addenda, Change Orders and shop drawings on the Work site (in good order) for use by Authority Representative.

4.1.9 *Daily Journal & Photo-Documentation.* Contractor shall maintain a daily journal of all activities on site, including but not limited to: deliveries to site; number of contractor personnel working on site; number of subcontractor personnel working on site; equipment operating on site; construction activities and work accomplished.

4.1.9.1 The journal shall include date and time stamped photo-documentation of the work described in the daily journal;

4.1.9.2 The daily journal shall commence on the date that the Contractor first starts work on site, including but not limited to brushing, clearing, mobilization, delivery of equipment or materials, etc. Following the first day of activity on site, Contractor shall log all work completed on a daily basis;

4.1.9.3 If no work is completed on site on a specific day, Contractor shall document "No Work on Site" in the daily journal for that date;

4.1.9.4 Contractor shall have daily journal with him/her at all times at the jobsite to ensure that work progress is being accurately documented as it is being completed;

4.1.9.5 Authority Representative may request to review daily journal at any time to confirm that Contractor is complying with daily journal requirements;

4.1.9.6 Two signed copies of the daily journal must be submitted with each Pay Application for the dates covered by the Pay Application. Pay Application will not be processed without submission of the daily journal.

4.2 Examination Of Site And Contract Documents

4.2.1 *Examination of Site.* By executing the Agreement, Contractor acknowledges having examined the Work site; compared the site with the Plans and Specifications; determined any site variation that affects the scope, cost and schedule of the Work; and investigated the conditions of existing clearances, restrictions, or limitations that affect access to the Work. Contractor's failure to do any and all of the above shall not become a basis for claim of additional monies or extension of time.

4.2.2 *Transportation/Access.* Contractor shall investigate the conditions of the existing public and private roads for clearances, restrictions, and other limitations to transportation, and the ingress/egress at the job site. The unavailability of transportation facilities or limitations thereon shall not become a basis for claims against Authority or extension of time for the completion of work.

4.2.3 *Examination of Contract Documents.* Contractor shall examine the Contract Documents to verify that there are no missing pages or sheets and shall obtain and examine any and all missing material prior to commencing the Work. Authority shall not allow any claim based on errors in the Contract Documents which Contractor has

reason to recognize, unless Contractor gives prompt notice of the error to Authority Representative in writing.

4.2.4 *Contractor's Failure to Examine.* No allowance shall be made on behalf of Contractor due to neglect, failure or error in acquainting itself with the Project and existing conditions or any and all of the Contract Documents.

4.2.5 *Contractor's Notice to Subcontractors.* Contractor's failure to provide all subcontractors with all information received shall not become a basis for monetary claim, extension of time or change to contract requirements.

4.3 Permits And Regulations.

4.3.1 *Compliance with Regulatory Requirements.* Contractor is directed to review and comply with any and all regulatory requirements of all agencies and jurisdictions having authority over the Work.

4.3.2 Contractor shall be responsible for securing and paying permits, fees and/or licenses necessary to complete the Work as directed by Authority and detailed in the Contract Documents. A copy of all permits and agreements will be provided to Contractor and must be displayed at the Work site. Contractor shall comply with all applicable laws, ordinances, rules and regulations. Before Authority Representative issues the certificate for final payment, Contractor shall deliver to Authority Representative all licenses, permits and certificates of inspection.

4.4 Subcontractors

4.4.1 *Listing of Subcontractors.* Contractor has set forth in the Bid Form of the Agreement the name, address, phone number, type and cost of work, and proof of required license for each subcontractor who will perform work or render services in any amount exceeding one-half percent (1/2%) of the total bid according to provisions of the California Public Contract Code §4100 through §4113. Each subcontractor shall be licensed by the State of California Department of Consumer Affairs for the portion of work they perform in accordance with Contractor's License Law.

4.4.2 *Failure to Specify.* If Contractor fails to specify a subcontractor, Contractor must be fully qualified and licensed and shall perform that work. Contractor shall not sublet or subcontract any portion of work that was not designated to a subcontractor in the original bid. If Contractor subcontracts any portion of work after Award of Contract to an undesignated contractor, Contractor shall be subject to penalties according to the California Public Contract Code §4110.

4.4.3 *Substitution of Subcontractors.* Contractor shall not substitute any subcontractor for another listed in the original Bid Proposal without the written consent of Authority Representative. Consent may be granted in any of the following situations:

- (a) Contractor demonstrates to Authority that the subcontractor listed was the result of an inadvertent clerical error, subject to the provisions of the California Public Contract Code §4107.5.
- (b) The subcontractor listed refuses to execute a written contract with Contractor.
- (c) The subcontractor listed is not licensed and in good standing pursuant to the provisions of California Business and Professions Code §7000 through §

7145.

- (d) The subcontractor fails or refuses to meet bond requirements of Contractor.
- (e) The subcontractor becomes bankrupt or insolvent.
- (f) The subcontractor is substantially delaying or disrupting the progress of the Work.
- (g) Authority Representative determines that work performed by the subcontractor is substantially unsatisfactory and not in accordance with the Contract Documents, or is failing or refusing to perform his subcontract.
- (h) Authority determines that a listed subcontractor is not a responsible contractor.
- (i) The listed subcontractor is ineligible to work on a public works Project pursuant to California Labor Code Section 1777.1 or Section 1777.7.

4.4.4 *Notice and Hearing.* Prior to substitution of a subcontractor, Authority Representative shall give written notice to the listed subcontractor of Contractor's request to substitute and the reasons for that request. Written notice shall be served by certified or registered mail to the last known address of the listed subcontractor. The subcontractor shall have five (5) working days to file with Authority written objections to the substitution. Failure to file written objections shall constitute the listed subcontractor's consent to substitution. If written objections are filed, Authority shall give five (5) working days written notice to Contractor and subcontractor of a hearing by Authority on Contractor's request for substitution.

4.4.5 *Subcontractor Assignment.* Contractor shall not permit a subcontractor to assign, transfer or convey the performance of work to another subcontractor without the written consent of Authority Representative.

- (a) Violation; Penalty. In accordance with California Public Contract Code §4110, Authority may consider the violation of any portion of this paragraph a breach of contract and cancel this Contract or penalize Contractor ten percent (10%) of the amount of the subcontract involved. Contractor shall be entitled to a public hearing as described above. Authority will give written notice of the hearing five (5) days in advance. All recovered funds shall be paid to Authority's General Fund.

4.4.6 *Contractor's Responsibility for Subcontractors.* Contractor agrees to be fully responsible to Authority for the acts and omissions of any and all subcontractors and for persons either directly or indirectly employed by them. Contractor shall coordinate all subcontractors to complete all the Work in accordance with the Contract Documents.

4.4.7 *Non-Contractual Relationship.* Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and Authority.

4.5 Joining, Cutting, Patching And Digging; Defects.

4.5.1 *Joining of Parts.* Contractor shall cut, fit or patch Contractor's work as required to make its several parts come together properly with the work of other contractors and shall do all that is necessary in the joining of all parts in a neat and workmanlike manner to the satisfaction of Authority Representative. Contractor shall not damage or endanger any portions of work fully or partially completed.

4.5.2 *Consent Required.* Contractor shall not cut, dig or otherwise alter the work of another contractor without the prior written consent of Authority Representative.

4.5.3 *Defects.* If Contractor's work depends upon the work of another contractor, Contractor shall inspect and promptly report to Authority Representative any defects that could prevent proper performance. Contractor's failure to inspect and report shall constitute acceptance of the other contractor's work. No claim by Contractor of prior defects affecting the Work will be considered after work has started. Contractor will make all corrections at own expense. Prior defects affecting Contractor's work discovered after starting shall be reported immediately to Authority Representative.

4.5.4 *Measurement of Work in Place.* Contractor shall measure work already in place and shall report promptly in writing to Authority Representative any discrepancy between existing work and the Plans and Specifications.

4.5.5 *Costs.* Any costs resulting from defective or out of sequence work shall be borne by Contractor.

4.6 Use Of Premises.

4.6.1 *Physical Limits of Materials, Operations.* Contractor shall confine all machinery, tools and other apparatus, the storage of materials and the operations of Contractor's workers to limits indicated by law, ordinances, permits or directions of Authority Representative. All personal vehicles shall park within the project boundaries and not trespass onto adjoining properties.

4.6.2 *Temporary Storage.* Contractor shall not use the Project site or any area set aside as a temporary construction yard as a site for the temporary storage of equipment, appliances, vehicles, or other materials, that are not or will not be used in the Work.

4.6.3 *Dangerous Loads.* Contractor shall not load or permit any part of the Work to be loaded with a weight that will endanger its safety or the safety of any person or property.

4.6.4 *Signs and Advertising.* Contractor shall comply with and enforce Authority Representative's instructions regarding placement of signs and advertising on and about the Work site. Advertising signs or name labels of any description shall not be placed on or near the Work site without Authority Representative's prior written approval.

4.6.5 *Authority Occupancy Prior to Acceptance.* Authority reserves the right to occupy or use any part, parts, or the entirety of the Work when Authority Representative deems it safe. The exercising of this right shall in no way constitute an acceptance of any part of the Work, nor shall it in any way affect the dates and times when payments become due Contractor; nor shall it in any way prejudice Authority's rights in the Contract. The Contract shall be deemed completed only when Authority Representative, in writing, accepts all the Work contracted for.

4.6.6 *Field Office.* If a job site office is used, Authority Representative must approve the facility and its location before installation. Authority makes no representations as to the feasibility of access to the Work area for a job site office or secured storage facility due to the nature of the site which may hinder or prevent such transportation.

4.7 Project Cleanliness.

4.7.1 *Requirements.* Contractor shall keep the Project and surrounding areas free from

accumulations of waste material and rubbish generated by employees and subcontractors. Contractor shall remove all rubbish, tools, equipment and surplus materials leaving the area "broom clean" at the completion of the Work, unless a different nature of cleanup or repair is specified elsewhere in the Contract Documents. Trash and rubbish must be stored in animal-proof containers, transported daily from site and legally disposed of. Contaminated or dangerous materials must be removed and promptly disposed of if encountered. No materials may be burned, buried or otherwise disposed of on site. Tools, equipment, and site protections measured are to be removed when Work is completed and when authorized to do so by Authority Representative.

4.7.2 *Disputes.* If a dispute arises between Contractor herein and any other contractor(s) retained by Authority (excluding any subcontractor(s) of Contractor herein) as to responsibility for removal of rubbish or other waste, Authority may remove the rubbish or other waste and charge all or any portion of such costs to Contractor as Authority Representative determines to be reasonable.

4.8 Public Works Contractor Registration. Contractor shall maintain current and valid Public Works Contractor Registration throughout the duration of this Agreement, as required by Labor Code § 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. **A copy of Contractor's Public Works Contractor Registration is attached hereto as Exhibit XX.**

4.9 As-Built Documents. Contractor shall maintain a complete and updated set of "As-Built" drawings and supplementary documents that shall be corrected daily and show every change from the original drawings and specifications, as well as the exact locations, sizes and kinds of equipment as actually installed. This set of drawings and documents shall be kept on site and shall be used as a record set. Updates must occur both on hard-copy and electronic version of "For Construction" documents.

4.9.1 These drawings shall also serve as work progress sheets, and neat and legible annotations shall be made daily as the Work proceeds, showing the Work as actually installed. These drawings shall be available at all times for inspection and shall be kept at the worksite in a location designated by Authority Representative.

4.9.2 Contractor will meet on a regular basis with Authority Representative to confirm the correctness and completeness of the "As Built" documents. Under no circumstances shall trenches be backfilled until Authority Representative has verified the "As Built" plans relating to such trenching. If, in the sole opinion of Authority Representative, Contractor fails to provide accurate and verifiable information, a survey crew may be retained by Authority at Contractor's sole expense.

4.10 Water And Air Pollution; Environmental Protection; Erosion Control.

4.10.1 *Water Pollution.* Contractor shall exercise every precaution to protect streams and bodies of water from pollution by fuels, oils, salts or other hazardous materials as defined herein. Contractor shall minimize muddying and silting of any stream or body of water. Contractor shall, at Authority Representative's direction, perform work in small units or use modified construction procedures when necessary, to provide effective water pollution

control. Contractor shall prevent any construction equipment, material, and debris from falling, landing, or reaching any adjacent creek drainage. At the pre- construction meeting, Contractor shall submit to Authorities Representative in writing, a program to control water pollution. Contractor shall provide, at no cost to Authority, temporary dikes, basins, ditches, straw, seed, or other appropriate device, when, in the opinion of Authority Representative, they become necessary as a result of Contractor's operations. Authority Representative may require Contractor to revise Project operations and the Work Schedule at no additional cost to Authority if Contractor's water pollution control measures are ineffective.

Dust Control. Contractor shall control dust resulting from Contractor's performance of the Work either by applying water or a dust palliative without additional costs to Authority. Use temporary enclosures, coverings and water sprinkling, or combinations thereof, as necessary to limit dust to lowest practicable level, consistent with the Project's Erosion Control and Pollution Prevention Plan, except do not use water to the extent that it causes flooding, erosion, or contaminated runoff. Authority Representative has full authority to suspend Work wholly or in part should Contractor fail to perform to the satisfaction of Authority Representative.

4.10.2 Pollution Prevention. All equipment shall be in proper working order, with no known leaks. All leakage shall be cleaned up properly. Equipment shall be cleaned of all excess dirt or soil materials prior to departing Authority property. All leakage shall be cleaned up properly as set forth in the Erosion Control and Pollution Prevention Plan if one has been prepared for the project. Equipment shall be cleaned of all excess dirt or soil materials prior to departing Authority property.

4.11 Protection Of Historic Resources And Human Remains.

Contractor shall, during all work, be alert for indicators of historic resources (such as bivalve shells or fragments, stone tools, old china objects or fragments, old glass objects or fragments, old foundations and old privy deposits) and human remains. If any such indicators are uncovered, all work within fifty (50) feet shall be halted and Authority Representative immediately notified. Authority will have the find evaluated by the proper authorities or professionals. Only the balance of that workday shall be compensated by Authority if Contractor cannot perform work elsewhere on the Project. Recommendations from the qualified authorities or professionals may result in a change of Work and a Change Order may be issued.

4.12 Hazardous Materials

4.10.3 Definition. As used herein, hazardous materials shall include all items listed in any statute, ordinance or publication defining hazardous materials including, but not limited to, common household items containing substances now or subsequently listed as a hazardous material or substance, chemicals, drugs, any materials used for laboratory analysis, nuclear and/or radioactive materials, toxic substances, hazardous substances, hazardous wastes, contaminated or polluting substances, materials or waste toxic, caustic, corrosive, gaseous or flammable substances that may cause injury, illness or death to living organisms.

4.10.4 *Approval.* Contractor shall not use any hazardous material in connection with this Project without the prior written approval of Authority Representative. Ten (10) working days prior to using a hazardous material, Contractor shall submit to Authority Representative complete Material Safety Data Sheet (MSDS) information, product specifications, and a document stating the application rate and method and including the name of the manufacturer's local representative and emergency telephone numbers. Authority Representative's response to Contractor's request for approval of hazardous materials use shall not affect Contractor's obligation to comply with the provisions of this section.

4.10.5 *Application.* In using hazardous materials, Contractor shall:

- (a) Notify Authority Representative of the application schedule at least five (5) working days in advance.
- (b) Comply with all applicable federal, state, and local laws, regulations, and ordinances relating to the use and disposal of hazardous materials and containers, environmental protection, industrial hygiene, worker and public safety.
- (c) Supply protective clothing or equipment as required by applicable federal or state law for all persons handling hazardous materials, and for Authority Representative as required for inspection of the Work.
- (d) Be responsible for the notification of all concerned parties adjacent to or effected by said hazardous material and as directed by Authority Representative.

4.10.6 *Special Situations.* In the event Contractor encounters material on the site reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous or toxic substance, Contractor shall immediately stop Work in the areas affected and report the condition to Authority Representative. The Work in the affected area shall not resume except when all asbestos, polychlorinated biphenyls (PCBs) and any and all other hazardous or toxic substances have been removed or rendered harmless and written agreement to resume work is entered into between Authority Representative and Contractor.

4.10.7 For Projects where scope of work includes Hazardous Materials Abatement and/or Remediation, refer to Project Drawings and Specifications for Hazardous Material requirements.

4.13 Safety

4.13.1 *Responsibility for Safety.* Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs. All work shall conform to the requirements of the California Administrative Code, Title 8, Industrial Relations, Division of Industrial Safety. Contractor shall be solely responsible for responding to, and the final satisfaction of any and all claims of personal injury or property damage.

4.13.2 *Safety Equipment and Workers.* Typical natural hazards on Authority lands include poison oak and other poisonous plants, poisonous insects and spiders, ticks, rattlesnakes, rabid animals, thorny plants, heat stroke, and rough terrain. All job site personnel should be able to recognize these hazards and to handle accidents involving

them. Contractor shall take all reasonable measures as required by existing conditions and performance of the Contract to protect the public and their property. Contractor shall provide adequate barricades, fences, signs, tarps, warning lights, watchpersons, flag persons, etc., to protect the public and their property. Safety devices and workers shall comply with the current State of California "Manual for Warning Signs, Lights and Devices for Use in Performing Work Upon Highways", as a minimum standard. All lighting shall be electric powered and left on from sunset to sunrise.

4.13.3 *Trench and Excavation Safety.* As required by the California Labor Code §6705, whenever any portion of the Work involves excavating or trenching five feet or deeper, Contractor shall submit for acceptance by Authority a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made, to protect Contractor's workers, Authority personnel, and the public at large. If the plan varies from standard shoring systems established by the Construction Safety Orders of the Division of Industrial Safety, a registered civil or structural engineer employed by Contractor shall prepare the plan. All costs for trenching, excavation safety, including engineering, shall be included within the Contract Bid. Contractor shall submit a shoring plan for review and acceptance by Authority at the pre-construction meeting for all work that may require excavations five feet deep or deeper. The responsibility for adequacy and safety remains the sole responsibility of Contractor. The shoring plan shall conform to all applicable safety orders and all provisions of this Agreement. All trenching or excavation greater than five (5) feet deep below ground surface shall meet the provisions of Public Contracts Code §7104, which provides the follows:

- (a) Contractor shall promptly, and before the following conditions are disturbed, notify Authority, in writing, of any:
 - 4.12.3.a.1 Material that Contractor believes may be material that is hazardous waste, as defines in Health and Safety Code Section 25117, and may be required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - 4.12.3.a.2 Subsurface or latent physical conditions at the site differing from those indicated.
 - 4.12.3.a.3 Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- (b) Authority shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract.
- (c) In the event that a dispute arises between Authority and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused

from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. Contractor shall retain any and all rights provided either by Contract or by law that pertains to the resolution of disputes and protests between the contracting parties.

4.13.4 *Use of Equipment.* No equipment shall move onto the Project without approval from Authority Representative. All equipment shall remain within the Project boundaries as set forth by Authority Representative and/or Contract Documents.

4.13.5 *Unauthorized Vehicles.* When required by this Contract or Authority Representative, Contractor shall take measures to prevent unauthorized vehicular traffic.

4.13.6 *Material and Equipment Transportation.* Trucks hauling material or equipment shall not exceed vehicle or posted load and speed limits.

4.14 Time Limits On Work.

4.14.1 *Work Hours.* No Work or equipment shall be started on a Work Day before 7 a.m., nor continue beyond 5 p.m., except when expressly permitted by the Contract Documents, agreed upon at the pre-construction meeting, or otherwise approved in writing by Authority Representative. Work outside of these hours, on weekends or on Legal Holidays, shall be subject to a fine of One Thousand Dollars (\$1,000.00) per day as liquidated damages, the exact amount of the actual damages being difficult to calculate, and the parties hereby agree that this is a fair and reasonable estimate of the actual damages suffered by Authority and its constituents and which shall be levied at the sole discretion of Authority Representative. Contractor may request permission to work on a Saturday, Sunday, or Legal Holiday, or outside normal working hours by notifying Authority Representative at least two (2) Working Days in advance. Contractor shall only be permitted to Work outside normal working hours at such times and on such days as are previously authorized by Authority Representative in writing.

- (a) *Extensions, Delays, Suspension Of Work.* Authority Representative shall have sole discretion in the approval or denial of Contract time extensions. Contractor may make written request to Authority Representative for an extension of time to complete the Contract Delay due to work by Authority or another contractor.
- (b) Delay due to difficulties in securing all required permits.
- (c) Labor dispute beyond Contractor's control that affects work progress.
- (d) A natural disaster that Authority Representative concludes substantially damages completed work or stored material (provided Contractor's neglect did not contribute to the damage).
- (e) Unusual Inclement Conditions. Contractor shall submit the accumulated record mean values from climatological data filed by the U. S. Department of Commerce as part of Contractor's claim for time extension due to inclement conditions, if an extended inclement weather season causes contract work delay.

4.14.2 *Liquidated Damages for Delay.* If Contractor fails to complete the work within the specified time plus any extensions thereof, Contractor shall become liable to

Authority, as liquidated damages, the sum of \$1,000.00 for each calendar day beyond the time specified above, the actual damage incurred being difficult to calculate and the parties hereby agree that this is a fair and reasonable approximation and not to be construed as a penalty. Nothing herein shall be construed to preclude Authority from recovery of damages for causes other than for delay by Contractor. Any money due Contractor may be retained by Authority to cover liquidated damages. Should retained money not be sufficient to cover damages, Authority shall have the right to recover the balance from Contractor or its sureties.

4.14.3 *Authorized Suspension.* Should Authority Representative authorize a work suspension, the suspension time shall be added to the Contract time. Work suspended by Authority shall not be deemed a waiver of Authority's right to damages for non-completion.

4.14.4 *Delay Caused by Authority.* In the event Authority delays Contractor in the Work, Contractor's compensation shall be limited solely to an extension of time. Contractor agrees that in no event shall Contractor be entitled to a monetary payment over and beyond that specified in the Contract plus approved change orders. However, if Authority causes the delay, and the delay is unreasonable under the circumstances and not within the contemplation of the parties, this subsection shall not preclude the recovery of compensation when Contractor would otherwise be entitled to such payment.

4.14.5 *Additional Work to Correct Delays.* If, in the opinion of Authority Representative, Contractor is not proceeding with the Work as scheduled, upon written direction from Authority Representative, Contractor shall work (at no additional cost to Authority) such overtime, additional shifts, Saturdays, Sundays or Legal Holidays required to correct delays. Contractor shall, by the diligent pursuit of the Work, ensure that the Work is completed within the Contract time.

4.14.6 promptly following an occurrence of any one or more of the following:

4.15 Employees, Work Day, Apprenticeship, Non-Discrimination And Wages.

4.15.1 *Skilled Workers.* Contractor and all subcontractors shall only employ workers suitably skilled in the Work.

4.15.2 *Character of Workers.* Anyone employed on the Project by Contractor, or any subcontractor, who in the opinion of Authority Representative is incompetent, disorderly, or otherwise acts improperly, after written notification, shall be dismissed from the Project and not further employed on any part of the Work.

4.15.3 *Lawful Working Day.* Work performed by workers more than eight (8) hours during any one (1) calendar day and more than forty (40) hours in any one (1) calendar week may be permitted pursuant to the overtime provisions of Labor Code Section 1815 and then only upon such terms, conditions and requirements as provided and fixed by law. As provided in California Labor Code §1813, Contractor shall forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the Contract by Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work in violation of Labor Code Sections 1810 through 1815.

4.15.4 *Apprenticeship Standards.* Contractor shall comply fully with the requirements of California Labor Code §1777.5 regarding employment of registered apprentices. If

Contractor willfully fails to comply with this code section, Contractor may be denied the right to bid on any Authority contract for a period of one (1) year from the date of non-compliance determined by the California Division of Apprenticeship Standards. When Authority receives from the Division notice that Contractor is not in compliance with apprenticeship standards, Authority shall withhold from Contract payments the amount of the civil penalty imposed by the Division, which funds may be released to Contractor upon order of the Administrator or upon completion of the Contract.

4.15.5 *Non-Discrimination.* Contractor and its subcontractors will comply with all applicable equal employment opportunity and affirmative action laws throughout the term of this Agreement. Contractor hereby certifies that it will not unlawfully discriminate in its employment with regard to of race, color, religion, creed, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, sex, sexual orientation, age (over 40), veteran status, or any other status protected by law; that all federal, state and local directives and executive orders regarding non- discrimination in employment will be complied with; and that the principle of equal opportunity in employment will be demonstrated positively and aggressively. Contractor further certifies that it shall require the compliance of its subcontractors on the Work with all of the provisions of this paragraph. Contractor hereby acknowledges its understanding that this Contract may be canceled, terminated or suspended in whole or in part and Contractor and/or its subcontractors declared ineligible for future contracts with Authority, in the event Contractor and/or its subcontractors are found in non-compliance with the terms hereof.

4.15.6 *Wages.* As required by law, Contractor shall pay all workers California Prevailing Wages for each trade or classification on the job during the term of this Agreement. These rates include, but are not limited to, employer payments for health and welfare, pension, vacation, travel time, subsistence pay and for apprenticeship and training obligations. The current issue of the Director of the Department of Industrial Relations for the State of California GENERAL PREVAILING WAGE RATES for straight time, overtime, Saturday, Sunday, and Legal Holidays is herein incorporated as part of this Contract. Any and all revisions to the GENERAL PREVAILING WAGE RATES that take effect during the Contract shall be adopted as part of this Contract. Contractor shall post Prevailing Wage Rates on job site. A copy of the GENERAL PREVAILING WAGE RATES is available for review at the office of Authority Representative. Copies of the prevailing wage rates are on file at Authority's principal office. For those crafts or job classifications requiring special prevailing wage determinations, please contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 603, San Francisco, CA 94101, (415) 703-4281. Authority will not recognize any claim for additional compensation because of payment by Contractor of any wage above the GENERAL PREVAILING WAGE RATES. The possibility of wage increases is an element to be considered by Contractor in determining its bid, and may not under any circumstance form the basis of a claim against Authority.

4.15.7 *Labor Code §1861.* Contractor has executed the affidavit, attached hereto and incorporated herein as Exhibit B-3, pursuant to Labor Code §1861.

4.15.8 *Holidays.* Holiday wage rates shall apply to holidays recognized in the collective bargaining agreement of the particular craft or classification concerned.

4.15.9 *Contractor and Subcontractors Compliance.* Contractor and each subcontractor shall pay general prevailing per diem wages (including holiday and overtime pay) to all of their workers on the Project.

4.15.10 Contractor shall pay any worker who was paid less than general prevailing wage rate an amount equal to the difference between the prevailing wage rate and the amount paid to the worker pursuant to California Labor Code §1775, and shall be subject to penalties as provided in section 1775.

4.15.11 *Payroll Record Requirements.* Contractor and each subcontractor shall keep Certified Payroll Records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed on the Project pursuant to California Labor Code §1776. Payroll records shall be certified and shall be available for inspection at all reasonable hours by Authority Representative and a copy shall be available to the employee, the employee's representative, the California Division of Labor Standards Enforcement and the California Division of Apprenticeship Standards. If a complaint is filed with Authority or the Division of Labor Standards Enforcement alleging that Contractor or subcontractor has paid less than prevailing wage on the Project, Authority shall withhold from progress payments to Contractor an amount equal to one hundred and twenty-five percent (125%) of the amount claimed until the allegation is settled.

4.15.12 *Records Submission and Retention.* Unless exempt, Contractor and all subcontractors shall submit monthly Certified Payroll Records to the Department of Industrial Relations through the Certified Payroll Reporting webpage (www.dir.ca.gov/public-works/certified-payroll-reporting.html). At any time, Authority may request to inspect copies of Contractor's or any subcontractor's Certified Payroll Records. Failure to provide access to such records within ten (10) days as required by Labor Code Section 1776 shall result in a penalty of one hundred dollars (\$100.00) per each calendar day or part thereof for each worker until Contractor complies with Section 1776. No progress payment shall be made by Authority without current, complete and accurate Certified Payroll Records on file with the Authority Representative.

Contractor and all subcontractors shall retain copies of all Certified Payroll Records and progress payment requests for a minimum of four years after the audit year in which wages were paid, or until the expiration of all applicable statute of limitations period(s), whichever is later. Authority reserves the right to inspect and copy all Certified Payroll Records retained pursuant to this Agreement. Contractor and all subcontractors shall dispose of retained payroll records according to Authority's Records Management Policy at the expiration of the required retention period.

4.16 Work Schedule.

At least three (3) days prior to the Pre-Construction Conference to be scheduled by Authority, Contractor shall provide three hard copies of a detailed critical path network schedule for performance of the Work, generated on a commonly used professional scheduling software program approved by Authority Representative. This schedule shall

incorporate all Subcontractor Work and other provisions necessary to bring the Work to Substantial Completion and Final Completion and Acceptance within the Contract Time. Schedule shall be itemized in sufficient detail to identify and show all administrative, engineering, permitting, submittal, procurement fabrication, site mobilization, inspections, testing, sampling, equipment erection and field construction activities required for completion of the Work. Schedule shall detail all items of work as described in the bid schedule and shall show the dates of start and completion for each item. Any required permits shall be obtained or permit application(s) shall be submitted within five (5) working days from the date of issuance of a written *Notice to Proceed*. The Contractor shall submit to the Authority Representative a monthly update to the Construction Schedule with each Application for Payment. The monthly update shall be in the form of a Summary Bar Chart and shall reflect the actual activity and progress of all Work through the preceding month. The Monthly Updates shall identify all actual start dates and completion dates and shall include a graphical representation of the interim progress of all activities started, completed, or in progress since the date of the previous Monthly Update. The Monthly Update shall include any changes, clarifications, or corrections recommended by the Authority Representative. Authority will make no progress payments to Contractor until Authority Representative has approved the Construction Schedule. Failure to make Construction Schedule adjustments shall be cause for Authority to delay progress payments. Construction Schedule changes shall not affect the Completion Date.

4.17 Submittals

4.17.1 The following terms shall have the following meanings:

- (a) “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for a portion of the Work.
- (b) “Shop Drawings” are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or Subcontractor to illustrate some portion of the work.
- (c) “Samples” or “Mock Ups” are physical examples which illustrate materials equipment or workmanship and establish standards by which the work will be judged.
- (d) “Submittals” shall include without limitation, Product Data, Shop Drawings, Samples, coordination drawings, certificates, manufacturers’ descriptive literature, materials safety data sheets, brochures, pamphlets, catalogue cuts, calculations, reports, color charts, and other descriptive data defining the article, material, equipment, device or assembly proposed for incorporation into the Work.

4.17.2 Within 20 days of execution of the Agreement, Contractor shall prepare a schedule for submission of all required Submittals (the “Submittal Schedule”). The Submittal Schedule shall identify any Submittals that are on the critical path of the construction schedule and provide sufficient time to order, test, procure, deliver, assemble and install the material and equipment in strict accordance with the Construction Schedule. The Submittal Schedule shall ensure sufficient time for Authority review, comment and

resubmittal, if required.

4.17.3 All Submittals shall be dated and properly identified by name of Project and name and address of Contractor. In addition, each Submittal shall be referenced to Drawing Details number(s) and/or Specification Section and paragraph number(s). Submittals without such identification will be returned without review.

4.17.4 Prior to submitting a Submittal to the Authority Representative, Contractor shall thoroughly review and approve the Submittal for compliance with the Contract Documents. By reviewing and approving all Samples and Shop Drawings, Contractor thereby certifies that it had determined and verified all field measurements, materials, catalogue numbers, and similar data, and that it has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents. Submittals without Contractors stamp and certification, and Submittals which in the opinion of the Authority Representative are incomplete or not in compliance with the Contract Documents, will be returned to the Contractor without review for resubmission.

4.17.5 Contractor shall provide Authority Representative with six (6) copies of all Submittals. If both Shop Drawings and Samples or Product Data are required for the same item, Authority Representative may require both to be submitted before approving either. No Submittal review comments or acceptance, on the part of the Authority's review thereof, shall constitute an authorization for any increase in Contract Price. Upon review, the Submittal shall be stamped as follows (or stamped using reasonably equivalent language acceptable to the Authority Representative:

(a) "Reviewed – No Exceptions Taken": No corrections or resubmissions are required. Contractor may proceed with the fabrication of construction;

(b) "Reviewed – Make Corrections Noted": Resubmission is not required.

Contractor may proceed with fabrication or construction on the condition that correction noted are incorporated into the Work. If Contractor cannot comply or disagrees with the corrections noted, it shall revise the Submittal and resubmit before proceeding with the fabrication or construction.

(c) "Review – Revise and Resubmit": Resubmission is required. Fabrications or construction may not proceed; any fabrication or construction shall be at Contractor's risk. Contractor shall revise the Submittal as indicated and resubmit.

(d) "Rejected": Resubmission is required. Fabrications or construction may not proceed; any fabrication or construction shall be at Contractor's risk. Contractor shall revise the Submittal in accordance with the Contract Documents and resubmit. Review cannot proceed because minimum requirements for Submittal have not been met.

4.17.6 After review, Contractor shall maintain a log of all Submittals marked "Reviewed – No Exceptions Taken" and "Reviewed – Make Corrections Noted" at the Contractors field office on site. Approved mock-ups if any, shall remain as the standard for acceptance of the Work.

4.17.7 Submittals shall be reviewed with reasonable promptness, considering the complexity of each Submittal and the timing of other Submittals delivered by the Contractor. Contractor shall allow at least three (3) weeks to process Submittals, and at

least four (4) weeks to process complex Submittals. These periods of time do not allow for resubmittals, if required. Contractor acknowledges that certain Submittals may require additional time.

4.17.8 Submittals shall be reviewed for their general characteristics and general design only. Authority review shall not in any way release Contractor from his duty to comply with the requirements in the Contract Documents or from his responsibility to ensure the proper fit, construction sequences, dimensions and quantities.

4.18 Materials.

4.18.1 *Quality.* All materials furnished by Contractor shall be new and meet all standards of quality and workmanship of their kind unless otherwise specified in the Contract Documents. Materials specified as recycled in the Contract Documents must meet appropriate California Department of Transportation (“Caltrans”) specifications as described. All materials are at any time subject to inspection, sampling, testing, approval or rejection by Authority Representative. When required by Authority Representative, Contractor shall furnish acceptable documented evidence of the kind and quality of materials used. The words "or equal" in the Plans and Specifications mean "or equal in the opinion of Authority Representative".

4.18.2 *Substitutions.* Authority Representative's approval of a substitute material shall not relieve Contractor of responsibility for total compliance with the Plans and Specifications. Contractor shall pay all costs for modifications resulting from the approved substitution of material. There shall be no cost to Authority resulting from the use of any substitute material(s) by Contractor.

4.18.3 *Substitution Request.* Request for a material substitution shall be submitted promptly to Authority Representative in writing at least ten (10) working days prior to the day approval is required so as not to delay the Work.

4.18.4 *Materials List.* When requested by Authority Representative, Contractor shall submit at least five (5) copies of catalog cuts, engineering data, and other information regarding materials that are proposed for the Work. The materials list submitted shall include a description of the materials and their suppliers. No progress payment shall be made before Authority Representative reviews and accepts the materials list.

4.18.5 *Unavailable Or Late Materials.* It is the responsibility of Contractor to order and schedule delivery of materials in time to avoid construction delays. If any item is unavailable or will be delivered late, Contractor shall immediately notify Authority Representative. Contractor must substantiate that materials were ordered in a timely manner. Authority Representative may grant a contract time extension or consider a suitable material substitution for continuing the Work.

4.19 Public Convenience.

4.19.1 *Public Convenience.* Contractor shall conduct the Work so as to ensure the least possible obstruction to traffic or inconvenience to the general public.

4.18.2 *Road and Sidewalk Closures.* Contractor shall not obstruct public roads or sidewalks during construction. Contractor shall not close or obstruct roads, driveways, trails, or other public or private passageways without permission from Authority

Representative, the private property owner or other authorities having jurisdiction.

4.18.3 *Failure to Provide for Safety.* If in the opinion of Authority Representative, Contractor fails to adequately provide for safety, Authority Representative may suspend construction within the area; or order and place any additional warning devices, barriers, or protective equipment deemed necessary; or do both. Authority shall not assume Contractor's responsibilities by this action and does not thereby release Contractor's obligations. Contractor will be liable to, and promptly reimburse Authority for, all costs Authority incurs in acting under this paragraph in an amount equal to twice Authority's expenses and costs in acting pursuant to this paragraph, as liquidated damages, the extent and amount of actual damage to Authority being difficult to precisely calculate and the parties agree that such measure of damages is a fair and reasonable estimation thereof. This action shall not become a basis for any claim for time or money against Authority.

4.20 Fire Hazards And Preventions

4.19.1 Contractor is responsible for any fire ignited by Contractor's employees, subcontractors, or equipment. Employees shall not be allowed to start fires. No open flames are permitted. Contractor shall have a working fire extinguisher available on-site or in an on-site vehicle.

4.19.2 Contractor shall take necessary precautions to guard against and eliminate fire hazards that may cause damage to the Work, building materials, equipment, public, and private property, including grassland, brush, and trees.

4.19.3 Flammable materials shall not be poured into drain lines and shall be disposed of only in a manner approved by the Fire Marshal's office and Authority Representative.

4.19.4 Fire hydrants shall be kept accessible to fire-fighting equipment at all times.

4.19.5 No smoking is allowed on the Work site or otherwise within a Authority Preserve.

4.19.6 For emergency response in the event of fire, Contractor shall call 911, and notify any other emergency response agencies identified to be a responder to the Work. Immediately following notification to emergency responders, Contractor shall notify Authority Representative.

4.21 Emergencies.

In an emergency affecting the safety of life, the Work or adjoining property, Contractor shall take all necessary and proper steps to prevent any loss, injury or death. Contractor shall make every effort to communicate with Authority Representative after emergency responders are notified. If the character of the emergency is such as to require action within a short time or circumstances otherwise render communication with Authority impractical, Contractor shall act independently and upon its own. Contractor's emergency acts will be subject to the direction and control of Authority as soon as it is practical.

4.22 Utilities.

4.22.1 *Existing Utilities.* Contractor's attention is directed to the existence of utilities shown or not shown on the Plans. The location of known utilities shown on the Plans is

approximate. It is Contractor's responsibility to investigate and locate existing utilities. Contractor shall call Underground Service Alert (USA North) (1-800-227-2600) for assistance. Contractor will immediately report to Authority Representative any utility that varies significantly from the Plans.

4.22.2 *Utilities Identified in Plans and Specifications.* When it is necessary for Contractor to remove, relocate or protect any utility that is identified in Plans and Specifications to execute this Contract, Contractor shall remove, relocate, or protect that utility or notify the owner and make arrangements for coordinating the removal, relocation or protection of that utility with his work. There shall be no claim for additional compensation or time by Contractor for this work. Contractor shall repair all areas surrounding utility work to Authority Representative's and utility owner's satisfaction according to California Government Code §4215.

4.22.3 *Utilities Not Identified in Plans and Specifications.* When any utility on the Project must be removed, relocated, protected or repaired by Contractor, and the utility is not identified in the Plans and Specifications, Authority shall compensate Contractor for the cost of such utility work. Authority shall compensate Contractor for equipment idled by work on such unidentified utilities. Contractor shall use reasonable care in his Work to prevent damage to any unknown utility. Authority shall not charge Contractor for delay of Work due to any unidentified utility. Contractor shall notify Authority Representative and the utility owner, in writing, whenever Contractor discovers an unidentified utility subject to California Government Code §4215.

4.22.4 *Right to Enter Reserved.* Authority and any and all utility companies have the right to enter the Project to make repairs and changes that become necessary in the performance of this Contract.

4.22.5 *Certificate of Satisfaction.* Contractor shall, at Contract completion, produce written certification provided by any utility affected by Contractor's work stating that the utility is satisfied with Contractor's work.

4.22.6 *Temporary Utilities and Facilities.* Unless otherwise stated in the Contract Documents, Contractor shall provide all temporary utilities and sanitary facilities except where restrooms are made available onsite by Authority. Authority Representative must approve all temporary utilities and sanitary facilities before installation. Contractor shall immediately remove such temporary items upon completion of Contract or upon the direction of Authority Representative.

4.22.7 *Cellular Communication.* The Project location may be remote, with limited or no cell phone service.

4.23 Protection Of Work And Property. Contractor shall protect from damage or loss, Work and any existing Authority, private, or other public improvements or resources including vegetation, pathways, roadways, structures and utilities not designated for removal or alteration. Contractor shall repair or provide replacement for any such damage or loss to the satisfaction of Authority Representative, all at no cost to Authority. When Contractor is working in or around existing vegetation, Contractor shall not disturb such and shall take adequate measures to preserve and protect all vegetation that is to remain. Particular care shall be taken not to debark trees, break limbs, or damage root systems.

ARTICLE FIVE

INSURANCE, BONDS AND INDEMNIFICATIONS

5.1 General Insurance Requirements.

5.1.1 Contractor shall provide, and keep in full force and effect during the Term of this Agreement, at Contractor's sole cost and expense, policies of insurance with companies licensed to do business in the State of California that are acceptable to Authority for the Coverages as more particularly set forth below. Contractor shall keep all required policies in full force and effect until final acceptance of the Work by Authority.

5.1.2 Contractor shall, within five (5) calendar days after *Notice of Award*, supply Authority with an acceptable Certificate of Insurance. An authorized insurance agent or broker must complete, execute and provide Authority with a Certificate of Insurance (ACORD 25-S, or a successor or comparable form, subject to prior approval by Authority) before a *Notice to Proceed* may issue. Authority reserves the right to cancel the contract if these requirements are not met within 30 calendar days of the *Notice of Award*.

5.1.3 The General and Automobile Liability policies must be endorsed to name Authority as an additional insured and must be on a primary non-contributing basis in relationship to any other insurance available to Authority. All policies taken out by Contractor insuring work and materials supplied must list Authority as an additional insured and be payable to Contractor and Authority. All policies shall contain a provision that they shall not be canceled or materially changed without thirty (30) calendar days' prior written notice to Authority. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Contractor to furnish the required insurance during the term of the Agreement.

5.2 Specific Insurance Requirements.

5.2.1 *Workers' Compensation Employer's Liability* coverage as required by statute, in full compliance with California Labor Code §3700, and containing a waiver of subrogation in favor of Authority. Contractor hereby acknowledges having read and understood the provisions of the California Labor Code §3700, which require every employer to be insured against liability for workers' compensation or that they undertake self-insurance in accordance with the provisions of that code, and Contractor agrees to comply with such provisions before commencing the Work. Acknowledgment shall be in the form attached hereto and incorporated herein as Exhibit B-3.

5.2.2 *Comprehensive or Commercial General Liability*, including coverage for Bodily Injury and Property Damage in the amount of \$2,000,000.00 per occurrence.

5.2.3 *Business Automobile Liability* coverage including owned, non-owned and hired vehicles in an amount of no less than \$2,000,000.00 per occurrence.

5.2.4 *Subcontractor(s) Insurance Requirements*. Contractor shall either require each

subcontractor to procure and maintain during the life of its subcontract all insurance of the type and in the amounts specified above or insure the activities of subcontractor(s) under its own policy or policies.

5.2.5 If awarded the contract, prior to contract execution, Contractor shall submit to Authority proof that Contractor has obtained all necessary insurance policies. **Proof of all insurance policies shall be attached to this Agreement as Exhibits XX-XX.**

5.3 Guarantee Bonds.

5.3.1 *Performance and Payment Bonds.* Contractor shall furnish Authority a Performance Bond in the amount of the Contract price, guaranteeing the faithful performance of the Contract, and a Payment Bond in the amount of the Contract price, guaranteeing the payment of claims of subcontractors, suppliers of materials or labor, and others. Bonds shall be in the forms attached hereto and incorporated herein as Exhibits B-1 and B-2, with admitted Sureties approved by Authority. Contractor shall pre-pay all bond premiums.

5.3.2 *Approval of Sureties.* Any admitted surety company which at the time of execution of this Contract is listed in the latest published U. S. Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies", is hereby deemed approved.

5.3.3 *Substitution of Securities.* The Contractor may elect to substitute securities for monies withheld by the Authority to ensure the performance of the Contractor. The evaluation, handling, and deposition of substituted securities shall be as set forth in the California Public Contract Code §22300.

5.4 Contractor's Indemnification Of Authority.

5.4.1 *Indemnity.* Contractor agrees to indemnify, hold harmless, defend, and protect Authority, its officers, directors, agents and employees from any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including all reasonable attorney's fees), penalties, judgments or obligations whatsoever arising out of or in connection with any injury, death, or damage to any person or property or pecuniary or monetary loss that results from, arises out of, or in any way relates to the activities of Contractor both on and off the Project, including but not limited to claims related to the presence, use or disposal of hazardous materials, except for injury or damage resulting from the sole negligence or willful misconduct of Authority.

5.4.2 *Claim.* In the event a Contractor becomes aware that a claim has been, or is likely to be, made against Authority, its officers, directors, agents or employees, or they or Authority is named a co-defendant in any action concerning the Contract, Contractor shall immediately notify Authority. Authority may retain legal counsel at Contractor's sole expense and Contractor shall reimburse Authority for all legal expenses, including reasonable attorney's fees, spent in representing Authority.

5.4.3 *Apportionment of Liability.* In the event that a judge in a court of competent jurisdiction makes an apportionment of liability between Authority and Contractor, neither Authority nor Contractor shall request that a jury determine apportionment of liability. Contractor shall indemnify and hold harmless Authority as set forth above, unless the

court determines that the injury or damage resulted from the sole negligence or the intentional and willful misconduct of Authority.

5.4.4 *Waiver.* Contractor hereby waives all claims and recourse against Authority including the right of contribution for loss or damage to property, and hereby releases Authority from any and all liability related to or in any way connected to Contractor's activities or Contractor's use of the Project site, premises or facilities.

5.4.5 *Contractor Responsibility.* Contractor and its subcontractors shall have sole responsibility for the safety of their equipment, property and personnel (including, but not limited to, its employees, agents, and officers) from any and all injuries, deaths or damages.

5.4.6 *Mutual Responsibility Of Contractors.* If Contractor causes damage to the work or others, or willfully or negligently delays another contractor or subcontractor in the performance of other work, Contractor is hereby obliged to attempt to settle such claim with such contractor or subcontractor by agreement. If a contractor or subcontractor serves written notice on Authority of Contractor's failure to meet this obligation or to settle the claim by agreement, Authority shall notify Contractor in writing of the pending claim. Contractor shall defend itself (and Authority if included in claim) at Contractor's sole expense, including the payment of Authority's attorney fees. Contractor shall pay all costs, expenses and liabilities incurred by Authority as a result of any judgment in favor of another contractor.

5.5 Assumption Of Risk.

5.5.1 *Injury, Damage to Work.* Contractor assumes all risks of injury or damage to the Work and materials arising from fire, storm, vandalism, theft or other causes prior to the acceptance of the Work. Contractor shall repair and/or replace any Work or materials damaged or destroyed, from any cause, to the reasonable satisfaction of Authority Representative and at no cost to Authority.

5.5.2 *Exception.* Contractor shall not assume risk of injury or damage to work when damage exceeding five percent (5%) of the total Contract amount is caused by an Act of God, as defined in Public Contracts Code Section 7105, provided that the Work damaged was built in accordance with acceptable and applicable building standards and the Plans and Specifications. In such event, Authority may terminate this Contract upon reasonable notice to Contractor and upon payment of any amount due Contractor.

ARTICLE SIX

PAYMENT AND COMPLETION

6.1 Schedule Of Values.

Contractor shall submit to Authority Representative a "Schedule of Values", which shall be

consistent with information shown in the Construction Schedule and provide a breakdown of the total Contract Sum by assigning dollar values to applicable network activities. The assigned network activity costs, when added to Contractor's overhead costs, profit, cost of bonds, insurance, etc., shall equal the total Contract Sum. The Schedule of Values, when approved by Authority Representative, shall be the basis for determining the value of Work performed for the purpose of executing monthly payment requests.

6.2 Application For Payment.

6.2.1 On or about the last day of each month in which Work is performed, Contractor shall submit three (3) copies of an Application for Payment to the Authority Representative supported by such data substantiating Contractor's right to payment as Authority Representative may require (such as copies of requisitions or invoices from subcontractors) and reflecting the retainage provided elsewhere in the Contract Documents. Absent written direction from the Authority Representative to the contrary, each Application for Payment shall be in the form of a notarized AIA Document G702, Application and Certification for payment and (where applicable) supported by AIA Document G703, Continuation Sheet. Contractor may submit for approval by the Authority Representative, their proposed Application for Payment form(s). The Application for Payment shall be accompanied by:

- (a) lien waivers and releases conforming to the requirements of the California Civil Code § 8120, *et seq.*, conditioned only upon the receipt of the payment applied for from Contractor and each Subcontractor performing the Work which is the subject of the Application;
- (b) unconditional lien waivers and releases, conforming to the requirements of the California Civil Code § 8120, *et seq.*, from Contractor and each Subcontractor performing the Work for which payment was made pursuant to the Application for the Payment covering Work for the month one month prior to the pending Application for Payment;
- (c) such evidence as the Authority Representative may from time to time request that each Subcontractor has received the funds allocated to it in any previous Applications for Payment; provided however, that the Authority Representative shall have no duty to verify that any Subcontractors have been paid;
- (d) invoices, receipts, vouchers and other reasonable evidence substantiating the costs of the Changes in the Work included in the Application, if any;
- (e) a separate written certification by Contractor that there is no known basis for the filing of any Liens against the Site or any other property of the Authority.

6.2.1 Contractor also shall certify the amounts previously paid by Authority to Contractor, the amounts previously paid to Subcontractors and the amount currently due to Contractor, with the amounts, in each case, broken down by trades. The Application for Payment shall constitute a representation from the Contractor to the Authority that the Work has progressed to the point indicated in the Application, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to the payment

in the amount requested.

6.2.2 When Contractor submits an Application for Payment, it shall be reviewed by Authority Representative as soon as possible to determine if it is a proper payment request. At the Authority Representative's request, Contractor shall attend monthly payment meetings to review Application for Payment. If Authority Representative determines an Application for Payment is not proper, it shall be returned to Contractor as soon as practicable, but no later than seven (7) days after receipt, and accompanied by a document stating the reasons the request is not proper. Upon receipt of a properly submitted and undisputed request, Authority Representative shall authorize payment to Contractor for the amount Authority Representative agrees is properly due within thirty (30) days of receipt of such proper request. Payment requests shall be submitted on Authority forms.

6.2.3 *Monthly Payment Not Acceptance of Work.* Monthly or partial payments shall not be considered as acceptance by Authority of the whole or any part of the Work done up to that payment or relieve Contractor of any of its obligations.

6.2.4 *5% Retention.* Following approval by Authority Representative of Contractor's Application for Payment, Authority shall pay the Contractor the approved amount; provided however, that except as to Contractor's General Conditions Costs (for which there will be no retention) a 5% retention shall be withheld from each progress payment. The retention will be paid to Contractor upon satisfaction of all the conditions to final payment set forth in Section 6.6.6.

6.2.5 *Substitute Securities.* Contractor may elect to substitute securities for monies withheld by Authority to ensure the performance of Contractor. The evaluation, handling, and deposition of substituted securities shall be as set forth in the California Public Contract Code §22300.

6.2.6 *Final Retention Payment.* After acceptance of the Work, Contractor shall submit to Authority Representative a request for the retained funds. The retained funds of the total Contract price shall be paid (except as otherwise provided in the Contract Documents) forty (40) calendar days after the filing date of the *Notice of Completion* and the receipt of all unconditional waivers and lien releases from subcontractors and suppliers. In the event of a dispute between Authority and Contractor, Authority may withhold from the Final Payment an amount not to exceed one-hundred-fifty percent (150%) percent of the disputed amount.

6.2.7 *Payments Withheld, Protection of Loss to Authority.* Authority Representative may withhold or nullify the whole or part of any progress payment as set out in the Contract Documents, including but not limited to payments withheld, to protect Authority from loss on account of:

- (a) Defective work not remedied.
- (b) Third party claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of Contractor to make payments properly owed subcontractors for materials, equipment or labor.
- (d) Reasonable evidence that the Contract cannot be completed for the unpaid balance.

- (e) Damage to Authority or to another contractor.
 - 1. Default of Contractor in the performance of terms of the Contract.
 - 2. Violation by Contractor of the apprenticeship requirements or the prevailing wage rate.
 - 3. Reasonable evidence that the Work will not be completed within the Contract time.

6.2.8 *Evidence of Payments.* Contractor agrees that upon request of Authority Representative Contractor shall submit a sworn statement setting forth the Work done or material furnished by subcontractors and suppliers, and the amount due and to become due to each. Before the final payment Contractor shall, if requested, submit to Authority Representative a complete set of unconditional lien releases or vouchers showing payments made for materials and labor used in the Work.

6.2.9 *Releases; Receipts.* When required, Contractor shall deliver a copy of receipts to Authority Representative and an affidavit that the receipts include all labor and material for which a claim could be filed. Neither the final payment nor the retained percentages will be due Contractor before all required receipts are received. If any subcontractor refuses to furnish a receipt in full, Contractor may furnish a bond satisfactory to Authority that indemnifies Authority against any claim, cost or damage, including all legal fees. Contractor shall refund to Authority all monies that Authority may be compelled to discharge for any unsatisfied claim, including all costs and reasonable attorney's fees.

6.2.10 No payment request will be processed until Authority Representative verifies that the "As Built" documents are current and correct by initialing and dating said documents.

6.3 Claims.

6.3.1 *Claim by Subcontractor, Supplier, Worker.* Any subcontractor, supplier of material or labor, worker or anyone having any claim against Contractor for work done or material furnished on the Work may give notice of such claim to Authority, who may withhold up to one-hundred twenty-five percent (125%) percent of the claim from payments due Contractor until the claim is settled. The provisions of this paragraph shall not lessen or diminish the right or duty of Authority to withhold payments under the provisions of the laws of the State of California.

6.3.2 *Third Party Claims.* Authority shall have the authority to settle, pay or compromise third party claims related to the Contract Documents or the activities of Contractor related to the Project. Authority shall notify Contractor of Authority's receipt of any such third party claim within twenty (20) days of receipt.

6.4 Final Inspection And Acceptance Of Work.

6.4.1 When the Work is complete, Contractor shall request from Authority Representative a final inspection of the Work. Authority shall make the final inspection within ten (10) calendar days of the request. If Authority determines that the Work has been completed and is acceptable, Authority Representative shall formally accept the Work in writing. Upon acceptance, Contractor shall be relieved of maintaining and protecting the Work unless

specified otherwise. If Authority determines that the Work is not complete or rejects the Work, Contractor shall be notified in writing of deficiencies and Contractor shall again initiate the procedure for final inspection after all such deficiencies are corrected.

6.4.2 At the final inspection, the Work may be substantially completed and accepted with a "minor" punch list as determined by Authority Representative. The punch list items are to be completed within the sixty (60) day retention period, otherwise Contractor waives any and all rights to the retention monies withheld by Authority. Authority Representative may hire another contractor or utilize Authority crews to complete the Work. All costs, including administrative costs, will be charged against the monies withheld and shall be deducted from the contract price.

6.4.3 Following final inspection by Authority Representative and the completion of all punch list items, Authority Representative will file a *Notice of Completion* for the project.

6.4.4 Before the date of the final inspection, the corrected and completed information shall be transferred to a clean full-sized copy, scanned and submitted to Authority Representative on CD, or other media approved by the Authority Representative, for review. Final payment shall be withheld until the "As-Built" documents are accepted.

6.5 Guarantee; Correction Of Work After Final Payment.

6.5.1 In addition to any guarantees required by the Plans and Specifications, Contractor guarantees all construction work and materials furnished under this Contract against defects for one (1) year from the date of final acceptance. Contractor shall be liable for all damages and income lost resulting from defects pertaining to the construction work and materials furnished under the Contract. Contractor shall, within seven (7) calendar days from receipt of written notice, repair and/or replace any defects (ordinary wear and tear excepted) and any resulting damage at Contractor's sole expense. In the event Contractor fails to remedy any defects within seven (7) calendar days from receipt of written notice, Authority may have defects remedied at Contractor's expense. Contractor shall pay Authority for all costs, including an administrative fee of fifteen percent (15%) of that cost, which the parties hereto agree is a fair and reasonable estimate of the costs likely to arise from such remedial work.

6.5.2 Nothing in this Contract shall relieve Contractor from responsibility for latent defects, departures from the Contract, fraud or gross mistakes and damage resulting from any of the above.

6.5.3 When required by the Contract Documents, guarantees shall be in the form of the following, on Contractor's own letterhead:

"GUARANTY-WARRANTY FOR"

We hereby warrant and guaranty that the installed in the has been done in accordance with the Plans and Specifications and that the Work as installed will fulfill the requirements of the guaranty-warranty included in these specifications. We agree to reimburse Authority for any income lost and to repair or replace any or all of our work together with any other work which may be displaced by so doing, that may prove to be defective in workmanship or material within one year from the date of acceptance of the above-named

Project by Authority, without any expense whatsoever to Authority, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the abovementioned conditions within seven (7) calendar days after being notified in writing by Authority, we, collectively and separately, do hereby authorize Authority to have such defects repaired and made good at our expense, and will honor and pay all costs and charges, including Authority's administrative fee of fifteen percent (15%) of the total cost, thereof upon demand.

Signed: Date:
Subcontractor

Countersigned: Date:
Contractor

ARTICLE SEVEN

CHANGES IN THE WORK

7.1 Change Orders.

7.1.1 *Authority Right to Require Changes.* The Authority reserves the right to make such alterations, deviations, additions to, or deletions from, the Plans and Specifications, including the right to increase or decrease the quantity of any item or portion of the work, or to delete any item or portion of the work, as may be deemed by the Authority Representative to be necessary or advisable, and to require such extra work as may be determined by the Authority Representative to be required for the proper completion or construction of the whole Work. If Authority Representative determines that a change ordered by Authority caused an increase or decrease in Contractor's costs or time required for completing the Contract, appropriate adjustments to the Contract price and/or time shall be made. Contractor shall not be entitled to any compensation for extra work or time to finish the Contract without a written Change Order from Authority Representative. Failure to agree on an adjustment of the Contract price or time extension shall not excuse Contractor from proceeding with the Work as changed.

7.1.2 *Form of Change Order.* The Contractor or Authority Representative may request changes to the work. Once proposed changes have been reviewed and approved, the Contractor shall submit a Change Order. Proposed Change Order Requests and Change Orders shall be completed using the forms attached hereto and incorporated herein as Exhibits B-4 and B-5. Once Change Order is approved by the Authority Representative, payment in accordance with the provisions as to compensation set forth therein shall

constitute full compensation for all work included therein or required thereby. Any such changes will be set forth in a Change Order, in the form attached hereto and incorporated herein as Exhibit B-5, which specifies, in addition to the Work to be done in connection with the change made, adjustment of contract time, if any, and the basis or amount of any additional compensation for such Work. No Change Order shall be effective until approved in writing as set forth herein by the Authority Representative. Upon receipt of an approved Change Order, the Contractor shall proceed with the ordered Work. If ordered in writing by the Authority Representative, the Contractor shall proceed with the Work so ordered prior to actual receipt of an approved Change Order. In such cases, the Authority Representative will, as soon as practicable, issue an approved Change Order for such work and the provisions hereof regarding "Procedure and Protest" shall be fully applicable to such subsequently issued Change Order. An approved Change Order shall supersede a proposed, but unapproved, Change Order covering the same Work.

7.1.3 When the compensation for an item of work is subject to adjustment under these provisions, the Contractor shall, upon request, furnish the Authority Representative with adequately detailed cost data for such item of work. If the Contractor requests an adjustment in compensation for an item of work as provided, such cost data shall be submitted with his request.

7.1.4 *Procedure and Protest.* A Change Order approved by the Authority Representative may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in an approved Change Order that he has not executed, he shall submit a written protest to the Authority Representative within fifteen (15) days after the receipt of such approved Change Order. An un-protested approved Change Order will be considered an executed Change Order as that term is used herein.

(a) The protest shall state the points of disagreement, and, if possible, the contract specification references, quantities, and costs involved. If a written protest is not submitted, payment will be made as set forth in the approved Change Order and such payment shall constitute full compensation for all work included therein or required thereby.

(b) Where the protest concerning an approved Change Order relates to compensation, the compensation payable for all Work specified or required by said Change Order to which such protest relates will be determined as provided herein. The Contractor shall keep full and complete records of the cost of such Work and shall permit the Authority Representative to have such access thereto as may be necessary to assist in the determination of the compensation payable for such Work.

(c) Where the protest concerning an approved Change Order relates to the adjustment of contract time for the completion of the work, the time to be allowed thereof will be determined as provided for in Paragraph 4.13.3, "*Liquidated Damages for Delay*".

7.1.5 *Eliminated Items.* Should any contract item of the Work be eliminated in its entirety, in the absence of an executed Change Order covering such elimination, payment will be made to the Contractor for actual costs incurred in connection with such eliminated

contract item if incurred prior to the date of notification in writing by the Authority Representative of such elimination. If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the Authority Representative, and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor. In such case, the material paid for shall become the property of the Authority and the actual cost of any further handling by Contractor will be reimbursed. If the material is returnable to the vendor, and if the Authority Representative so directs, the material shall be returned and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material and the actual cost of handling such returned material reimbursed. The actual costs or charges to be paid by the Authority to the Contractor as provided for herein will be computed in the same manner as if the Work were to be paid for on a force account basis.

7.2 Changes In Character Of Work. If an ordered change in the Plans or Specifications materially changes the character of the Work of a contract item from that on which the Contractor based his bid price, and if the change increases or decreases the actual unit cost of such changed item as compared to the actual or estimated actual unit cost of performing the Work of said item in accordance with the Plans and Specifications originally applicable thereto, in the absence of an executed contract change order specifying the compensation payable, an adjustment in compensation thereof will be made in accordance with the following:

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

7.2.2 If the compensation for an item of Work is adjusted under this Section, the costs recognized in determining such adjustment shall be excluded from consideration in making an adjustment for such item of work under the provisions of the paragraph titled "Increased or Decreased Quantities."

7.2.3 Failure of the Authority Representative to recognize a change in character of the Work at the time the approved contract change order is issued shall not be construed as relieving the Contractor of the duty and responsibility of filing a written protest within the fifteen (15) day limit as provided in the paragraph titled "Procedure and Protest."

7.3 Extra Work. New and unforeseen Work will be classed as Extra Work when determined by the Authority Representative that such Work is not covered by any of the various items for which there is a bid price or by combinations of such items. In the event portions of such Work are determined by the Authority Representative to be covered by some of the

various items for which there is a bid price or combinations of such items, the remaining portion of such Work will be classed as Extra Work. Extra Work also includes Work specifically designated as Extra Work in the Plans or Specifications. The Contractor shall do such Extra Work and furnish labor, material, and equipment thereof upon receipt of an approved contract Change Order or other written order of the Authority Representative, and in the absence of such approved contract Change Order or other written order of the Authority Representative, he shall not be entitled to payment for such Extra Work. Payment for Extra Work required to be performed pursuant to the provisions in this Section, in the absence of an executed contract Change Order, will be made by force account; or as agreed to by the Contractor and the Authority Representative.

7.4 Contract Price Adjustments. Contract price adjustments for Work covered by an authorized Change Order shall be made as follows:

7.4.1 Compensation shall be computed on the basis of one or more of the following:

7.4.1.1 Unit prices, as shown on the Bid Proposal; or

7.4.1.2 Lump sum, as agreed upon by Authority and Contractor based on the estimated cost of the extra Work, plus a "fixed fee", as follows:

(a) The estimated cost is the sum of the following:

(b) Labor - Gross wages or salaries (including authorized overtime) of Contractor and/or subcontractor employees directly employed on the Extra Work.

(c) Labor Fringe Benefits - Additional direct labor expenses of workers (i.e., health & welfare, pension, vacation/holidays and training, and all benefits required by collective bargaining agreements).

(d) Labor Surcharge - Additional Social Security and unemployment taxes as required by State and Federal laws (maximum 11.95% allowed).

(e) Materials - Contractor furnished materials permanently incorporated by the Extra Work (including sales tax). Contractor shall not gain from Authority furnished materials.

(f) Miscellaneous - Specialized tools, appliances, implements, utilities, royalties, permits, inspections, fees, etc., exclusive to the Extra Work.

(g) Equipment - On site equipment and rental equipment used in the Extra Work.

(h) Bonds - Costs to cover additional payment and performance bond charges (maximum 1% allowed).

7.4.1.3 The "fixed fee" shall be a percentage of the estimated costs and shall constitute full compensation for all costs and expenses not listed above. These charges for overhead and profit shall not exceed the following:

(a) Twenty percent (20%) of the estimated cost of labor.

(b) Fifteen percent (15%) of the estimated cost of materials and miscellaneous costs.

(c) Ten percent (10%) of the estimated cost of owned or rented equipment.

7.4.1.4 The limits upon overhead and profit shall be as follows:

- (a) Overhead and profit for Contractor or any subcontractor who has the Work performed by a subcontractor or second tier subcontractor shall not exceed five percent (5%) of the extra work cost.
- (b) Overhead and profit for all contract tiers shall never exceed fifteen percent (15%) of the actual extra work.
- (c) The responsibility of distributing Extra Work overhead and profit among contractor tiers rest solely with Contractor.

7.4.1.5 Time and Materials, as observed and agreed upon, on a daily basis by Authority Representative and Contractor for labor, materials and equipment used to accomplish the Extra Work. A daily log of such shall be signed by both parties and will be the basis for a subsequent Change Order. Authority Representative's determination of allowable costs shall be final and binding.

7.4.1.6 For Work deleted, the reduction in the Contract price shall be computed as follows:

- (a) Unit price(s).
- (b) A lump sum agreed upon by Contractor and Authority Representative based on the estimated cost of the deleted Work. No fixed fee shall be added to the estimated cost.
- (c) If the parties are unable to agree on the reduction in the Contract price, Authority Representative shall make a final and binding determination of the reduction in price based upon the estimated cost savings to Contractor.

7.5 Contract Time Adjustments. Adjustments in time allowed for completion of the Work due to change orders shall be made by in consultation between the parties. If the parties are unable to agree on the time extension or reduction, Authority Representative shall make a final and binding determination of the time extension or reduction allowed for the change.

7.6 Claims For Extras. If Contractor claims that any instructions received from Authority involve extra cost or time, Contractor shall give Authority Representative written claim for Extra Work before further proceeding with the Work. No oral statements of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.

ARTICLE EIGHT

TERMINATION OF THE CONTRACT

8.1 Termination For Default And Acts Of Nature.

8.1.1 *Grounds.* Authority may terminate this Contract for any of the following causes of Default or Acts of Nature:

- (a) Contractor breaches any provision of the Contract.
- (b) Contractor makes an assignment to creditors.
- (c) Contractor files for bankruptcy.
- (d) A receiver is appointed due to Contractor's insolvency.
- (e) In the sole opinion of Authority Representative, Contractor fails to supply adequate or proper workers, materials, tools or equipment.
- (f) Contractor disregards written instructions from Authority Representative.
- (g) In the sole opinion of Authority Representative, Contractor refuses or fails to prosecute the Work with the diligence that assures completion of Work within the contracted time period.
- (h) The Work is damaged by Act of God as provided for herein.

8.1.2 *Notice.* Authority shall give Contractor and its sureties written notice when grounds for termination by Default exist. The notice shall set forth the nature of the Default and the time allowed for correction thereof. Contractor's right to do the Work shall automatically terminate if the Default is not corrected within the set time.

8.1.3 *Authority's Remedies.* Upon termination, Authority may either require Contractor's sureties to complete the Work or take over the Work and/or employ another contractor to complete the Work.

8.1.4 *Payment after Termination.* If Authority terminates Contractor for Default, Contractor shall not receive any payment before the entire Work is complete and accepted by Authority Representative. Authority may assume and finish the Work or hire another contractor to finish the Work. Authority will pay Contractor any monies of the Contract (less retention) that remain after deducting for all damages and the full cost of finishing the Work plus liquidated damages of ten percent (10%) of said cost, the actual damages to Authority being difficult to fully ascertain, and the parties hereby agree that this is a fair and reasonable estimation thereof. Contractor and/or Contractor's sureties shall be liable to Authority for all damages and costs, plus the additional ten percent (10%) of damages and costs exceeding the Contract price.

8.1.5 *No Waiver.* Actions pursuant to this paragraph shall not waive, prejudice, or in any way diminish or limit such other rights or remedies as Authority may have in law or equity.

8.2 Contractor's Abandonment. Contractor's abandonment or failure to supply sufficient material or workers to conduct the Work for a period of more than three (3) Working Days after receipt of written notification from Authority of such failure shall be grounds for termination of Contractor's control of the Work. Authority may thereafter assume control of the Work and charge Contractor any and all costs and expenses for the

finishing of the Work. The withholding of payments, the application of such to the completion of the Work, the payment of liquidated damages and penalties, and any further payment due Contractor shall be as set forth herein.

8.3 Abandonment.

8.3.1 *Authority's Right.* Authority has the right to abandon or indefinitely postpone any part or the entirety of the Contract at any time. Authority Representative will give Contractor written notice of abandonment specifying the extent and date of termination.

8.3.2 *Contractor's Obligation.* Unless otherwise directed in writing by Authority Representative, Contractor shall after receipt of Notice of Abandonment:

- (a) Stop work under the Contract to the extent and date specified;
- (b) Place no further orders for materials, services, or facilities except as required to complete the Work not abandoned;
- (c) Terminate and settle all orders and subcontracts that relate to the Work abandoned;
- (d) Settle all outstanding liabilities and claims arising out of abandonment to the satisfaction of Authority Representative;
- (e) Transfer title to Authority and deliver as directed by Authority Representative: all fabricated or un-fabricated parts, works in process or complete, supplies, and all other materials produced or acquired in connection with the Work abandoned; and complete or partly complete plans, drawings, information, and all other property required to be furnished to Authority;
- (f) Complete the Work not abandoned;
- (g) Protect and preserve property related to this Contract in the possession of Contractor which Authority has or may acquire; and
- (h) Submit an application for final payment to Authority Representative.

8.3.3 *Payment.* Authority Representative shall issue payment to Contractor for all work performed and materials provided plus any retention withheld up to the effective date of abandonment. Payment shall constitute the full amount due Contractor by Authority.

Exhibit 1

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: That _____ as Principal, hereinafter called Contractor, and _____ as Surety or Sureties, hereinafter called Surety, are held firmly bound unto the Santa Clara County Open Space Authority, hereinafter called Obligee, for the use and benefit of all persons and laborers of every class performing any work or labor upon or bestowing skill or other necessary services or furnishing materials, provisions, provender or other supplies to be used or consumed in, or furnishing equipment or power contributing to the work described in the agreement hereinafter mentioned, or in any alteration, modification or extension thereof, which persons and laborers are hereinafter called Claimants, in the amount of (spell amount) (\$), for which payment, well and truly to be made, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, a certain written Agreement, dated _____, 20__ was made and executed by and between the Obligee, as Owner, and Contractor, which agreement is hereinafter called the Contract and is by reference made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Contractor shall promptly make payment to all Claimants for all labor and material used or reasonably required for use in the performance of the Contract, or any alteration, modification or extension thereof, whether the Contract, or any alteration, modification or extension thereof, is determined to be void, voidable, or otherwise, or for any amount due under the Unemployment Insurance Act of the State of California with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the California Franchise Tax Board from the wages of employees of the Contractor and/or any and all subcontractors pursuant to California Revenue and Taxation Code Section 18806 with respect to such work or labor, then this obligation shall be void; otherwise, it shall be and remain in full force and effect.

The Contractor and Surety hereby jointly and severally agree with the Obligee that every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last said Claimant's work or labor was done or performed or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. The Obligee shall not be liable for payment of any costs or expenses of any such suit. No suit or action shall be commenced hereunder by any Claimant:

1. Unless Claimant, other than a Claimant having a direct contract with the Contractor, shall have given written notice to any two of the following: The Contractor, the Obligee or the Surety, within ninety (90) days after such Claimant did or performed the last of the work

or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Contractor, Obligee, or Surety, at any place where its office is regularly maintained for the transaction of business, or by personal service.

2. After the expiration of seven months from the date of recordation of a Notice of Completion or Notice of Cessation if such notice is recorded pursuant to Civil Code §8060; or, if no such Notice of Completion or Notice of Cessation is recorded, after nine months from the date of completion or cessation of the work.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith herewith, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claims for the amount of such lien be presented under and against this bond.

It is further expressly covenanted and agreed that in the event that more than one Surety is obligated hereunder, then, in that event, the co-Sureties bind themselves in the above stated sum only to the extent of the amount set forth opposite each Surety's name in Appendix A to this bond, which Appendix A is attached hereto and by this reference made a part hereof.

IN WITNESS WHEREOF, the Contractor and the Surety or Sureties have hereunto signed their names this

_____ day of _____, 20__.

Contractor Name Surety

Contractor Signature Attorney-in-Fact

Exhibit 2

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: That _____ as Principal, hereinafter called Contractor, and _____ as Surety of Sureties, hereinafter called Surety, are held firmly bound unto the Santa Clara County Open Space Authority, as Obligee, herein after called Authority, in the sum of _____ (\$), for which payment Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, a certain written Agreement, dated _____, 20__, was made and executed by and between the Authority, as Owner and Contractor, which agreement is hereinafter called the Contract and is by reference made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Contractor shall well and faithfully keep and perform all the covenants and agreements of Contract, and all alterations, modifications, and extensions thereof, by the Contractor to be kept and performed, and shall fully complete all of the work described in the Contract, and all alterations, modifications, and extensions thereof, and shall save and hold harmless the Authority from any and all loss of damage arising out of the failure of the Contractor and/or any and all subcontractors, to fulfill the Contract, and all alterations, modifications and extensions thereof, and shall fully reimburse and pay to the Authority all outlay and costs which the Authority may incur in making good any default of the Contractor and/or subcontractors, and in replacing and/or making good any defective material or faulty material or workmanship in the work of the contractor and/or any and all subcontractors, which may be discovered within one year subsequent to the completion and acceptance of the work provided for in the contract, then the above obligation shall be void; otherwise, it shall be and remain in full force and effect.

It is expressly covenanted and agreed by and between the Contractor and the Surety that the liability of the Contractor and the Surety shall at all times, and under all circumstances, be co-extensive, and that the Surety shall not be discharged, released or exonerated from liability under this bond, in whole or in part, by an alteration and/or modification of the contract, whether notice hereof is given the Surety or not, and that the surety shall be bound thereby, and also bound by any departure or deviation on the part of the Authority from the terms of the Contract.

It is further expressly covenanted and agreed that in the event that more than one Surety is obligated hereunder, then, in that event, the co-Sureties, bind themselves in the above stated sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of them, and for all other purposes each Surety binds itself, jointly and severally with the Contractors for the payment of such above stated sum only to the extent of the amount set forth opposite the Surety’s name in Appendix A to the bond, which Appendix A is attached hereto and by this reference made a part hereof.

No change or alteration or modification of the Contract or of the work required thereunder shall release or exonerate any Surety or Sureties on the bond. This bond shall remain in full force and effect notwithstanding that the contract or any applicable law or statute of the State of California shall be held to be invalid.

IN WITNESS WHEREOF, the Contractor and the Surety or Sureties have hereunto signed their names this

_____ day of _____, 20__

_____. Contractor Surety

Signature Attorney-in-Fact

Exhibit 3

**WORKERS' COMPENSATION CERTIFICATE
Labor Code Section 1861**

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

Signature

Date

(Page left intentionally blank)

Exhibit 4

PROPOSED CHANGE ORDER REQUEST TEMPLATE

Proposed Change Order No. _____

Project

Contractor

_____ ***Date of Issue***

The following Change is being considered for the Project. Contractor shall quote on this "Proposed Change Order" form, a proposed amendment to the Contract Price and to the Contract Term which would be required if the Authority were to order the proposed Change.
THIS DOCUMENT IS NOT AN ORDER FOR CHANGES TO THE CONTRACT.

Describe Change here and “as per attached description” if necessary.

(Page left intentionally blank)

Exhibit 5
CHANGE ORDER TEMPLATE

Change Order No.

Project

Purchase

Order No.

Contractor

Date of Issue

Contractor is directed to, and hereby agrees to, proceed promptly with the specific changes to the Work attached hereto and incorporated herein, in conformity with the Contract Documents:

| | | |
|---|----|----------|
| The ADDITIONAL CHARGE or DEDUCTION (circle one) for the above work is | \$ | |
| The original Contract Sum was | \$ | |
| Net change by previous Change Orders | \$ | |
| The Contract Sum prior to this Change Order was | \$ | |
| The Contract Sum will be (increased) (decreased) (unchanged) by | \$ | |
| The new Contract Sum including this Change Order will be | \$ | |
| The Contract Time will be (increased) (decreased) (unchanged) by | | cal.days |
| The Completion Date as of the date of this Change Order is | | |

_____ Date: _____ Contractor

_____ Date: _____ Authority Representative

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