



**BID AND CONTRACT DOCUMENTS**  
**FOR THE**  
**CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS**

Bid Opening: **10:00 A.M., August 30, 2021**

City of Monte Sereno  
18041 Saratoga-Los Gatos Road  
Monte Sereno, CA 95030

**August 2021**

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**CITY OF MONTE SERENO  
SANTA CLARA COUNTY, CALIFORNIA**

**NOTICE INVITING BIDS**

- 1. NOTICE IS HEREBY GIVEN** that the City of Monte Sereno (“City”) invites and will receive sealed Bids up to but not later than **August 30, 2021 10:00 AM** at office of the City Clerk, located at 18041 Saratoga-Los Gatos Road, Monte Sereno, California, 95030, for the furnishing to City of all labor, equipment, materials, tools, services, transportation, permits, utilities, and all other items necessary for the **Clara Street and Natalye Drive Street Improvements** (the “Project”). At said time, Bids will be publicly opened and read aloud at the City Office. Bids received after said time shall be returned unopened. Bids shall be valid for a period of 90 calendar days after the Bid opening date.
- 2. Requesting Plans And Specifications:** Plans and Specifications may be viewed at the City of Monte Sereno Official Website (<http://cityofmontesereno.org/bids.aspx>). It is the responsibility of each prospective bidder to obtain all issued addenda prior to bid opening. Addenda will be available to download at the City’s website listed above or at the office of the City Engineer. Contract documents will not be available for inspection or purchase from the City by potential Bidders. Potential Bidders, Subcontractors and other interested parties may request the Plan Holders’ List by emailing the City Engineer at [cityengineer@cityofmontesereno.org](mailto:cityengineer@cityofmontesereno.org)
- 3. Description Of The Work:** In general, the Clara Street and Natalye Drive Street Improvements Project consists of the installation of approximately 1,450 linear feet of concrete rolled curb and gutter, 29,100 square feet of roadway reconstruction, and asphalt overlay of Clara Street, Natalye Road and portions of La Rinconada Drive.
- 4. Engineer's Estimate: \$900,000**
- 5. Contract Time:** Contract time is established as **SIXY (60) calendar days**. Calendar days will be counted upon the Contractor’s receipt of the Notice to Proceed. Any work remaining incomplete after the specified period shall subject the Contractor to pay **liquidated damages to the City of One Thousand Dollars (\$1000) per day**.
- 6. Contractor's License Classification and Subcontractors:** Unless otherwise provided in the Instructions for Bidders, each Bidder shall be a licensed contractor pursuant to sections 7000 et seq. of the Business and Professions Code in the following classification(s) throughout the time it submits its Bid and for the duration of the contract: **Class A General Engineering Contractor's License**.
- 7. Bid Bond:** Pursuant to California Public Contract Code Section 20170, each proposal shall be accompanied by a bid security in the form of cash, cahiers or certified check, or bidder’s bond made payable to the “City of Monte Sereno” for an amount equal to at least ten percent (10%) of the Bid Amount and no bid shall be considered unless such security is enclosed therewith. The posted bid security shall be forfeited to the City if the bidder does not enter into a contract within ten (10) calendar days after notice of award.

**8. Prevailing Wages:** The work contemplated by this contract is a public work subject to prevailing wages under California Labor Code Section 1770 et. seq. The successful bidder will be required to pay not less than the prevailing rate of per diem wages as determined by the California Department of Industrial Relations in effect on the bid submittal date.

**9. Department of Industrial Relations:** All contractors and subcontractors have been required since April 1, 2015 to be registered with the Department of Industrial Relations (DIR). No contractor or subcontractor may be listed on a bid proposal or may work on a public works project unless registered with DIR.

All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). For additional information, visit the DIR website at: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

**10. Further Information:** For further information, contact Jessica Kahn, City Engineer, at [jessica@cityofmontesereno.org](mailto:jessica@cityofmontesereno.org). Questions will only be considered and answered via email. Questions will not be considered or answered after Friday, August 27, 2021 at 10:00 AM.

**Deliver Bids To:** CITY OFFICES - CITY CLERK'S OFFICE  
18041 Saratoga-Los Gatos Road, Monte Sereno, California, 95030

**\*Note\*** If you choose to mail your Bid Proposal via any of the overnight/express services, the outside envelope **MUST** be clearly marked as

**[SEALED BID FOR:**

**Clara Street and Natalye Drive Street Improvements**

**DELIVER IMMEDIATELY TO CITY CLERK'S OFFICE]**

**Date And Time:** August 30, 2021 at 10:00 AM

Date: Advertised August 13, 2021, August 20, 2021

**End of notice inviting bids**

# INSTRUCTIONS TO BIDDERS

## CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS

### 1. Proposal Requirements & Bidder's Representations

- 1.1 Bids shall be submitted before the submittal dead-line in writing on forms provided by the City for Proposal, including Bid Schedule, Debarment Certification, Addenda Acknowledgement, Non-Collision Declaration, Equal Employment Opportunity Certification, Iran Contracting Certification, Designation of Sub-contractors, Contractor's License information, Bidder's Signatures Page and Bidder's Bond. Contractor's Experience and References form must be submitted within 72 hours of the Proposal submittal deadline.
- 1.2 The City provided Proposal forms shall be completely filled out, in ink or typing, Corrections may be made if initialed by the individual signing the bid. All information requested therein must be clearly and legibly set forth in the manner and form indicated.
- 1.3 A bidder's bond, certified check or cashier's check from a banking institution in the amount not less than ten percent (10%) of the sum total bid, payable to the City of Monte Sereno, shall accompany the bid proposal.
- 1.4 No person, firm, corporation, partnership or legal joint venture may submit more than one bid for the Project. However, a person, firm, corporation, partnership or legal joint venture that has submitted a subcontract proposal to a bidder, or that has quoted prices on materials to a bidder may submit a subcontract proposal, quote prices to other bidders and submit its own bid.
- 1.5 The City reserves the right to reject any and all proposals and/or waive any irregularity in any proposal received. Unless otherwise required by law, no bidder may withdraw his proposal for a period of sixty (60) days after the date set for receipt thereof.
- 1.6 Each bidder by submitting a bid represents that:
  - a. The bidder has read and understands the Contract Documents and the bid is in accordance with all of the requirements of the Contract Documents and applicable law.
  - b. Representatives of the bidder have visited the Project site and have familiarized themselves with the conditions under which the Project work is to be performed so as to ensure that the Project work may be performed for the amount bid. It will be the sole responsibility of each bidder to conduct any additional examination, investigation, exploration, test, study or other inquiry and to obtain any additional information pertaining to the physical conditions (including surface and underground utilities) that may affect the cost, progress, or performance of the Project. Bidders seeking any such additional examination or other inquiries or information concerning the Project will do so at the bidder's sole expense.
  - c. The bidder has informed the City in writing no later than three (3) working days prior to the time specified for bid opening of any apparent conflicts, errors, or ambiguities

contained in the Contract Documents or between the contents of the Contract Documents and the Project site.

- d. Interpretation, correction or change of the Contract Documents prior to bid opening will be made by addendum signed by an authorized representative of the City and transmitted to all Contract Documents recipients. No other interpretation or information concerning the Contract Documents issued prior to the date specified for opening bids will be binding. All addenda signed by an authorized representative of the City and issued prior to the time and date specified for opening bids will form a part of the contract documents and must be acknowledged on the proposal forms. Any changes, exceptions or conditions concerning the Project and/or the Contract Documents submitted by any bidder as part of a bid may render that bid non-responsive.

#### 1.7 Bid Submittal

By submitting a bid, bidders authorize City representatives to verify any and all information provided on the bidder's questionnaire and agree to indemnify, defend and hold harmless the City and its officials, officers, employees, agents and volunteers to the full extent permitted by law from and against any claims, liability or causes of action, including, without limitation, legal fees and costs, arising out of verification of the information provided on the bidder's questionnaire, and/or arising out of use of information provided in the bidder's questionnaire to determine, in accordance with applicable law, the qualification of the bidder for performing the Project.

Bids may be withdrawn prior to the time set for bid opening by a written request signed by an authorized representative of the bidder filed with the City Clerk. The bid security submitted with bids so withdrawn will be returned to the bidder.

#### 2. Bid Protests

Any protest of the proposed award of Bid to the bidder deemed the lowest responsible bidder must be submitted in writing to the City, no later than 5:00 PM on the third (3<sup>rd</sup>) business day following the date of the Bid opening.

- 2.1 The protest must contain a complete statement of the basis for the protest.
- 2.2 The protest must state the facts and refer to the specific portion of the bid or the specific statute that forms the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.
- 2.3 The party filing the protest must concurrently transmit a copy of the protest to the bidder deemed the lowest responsible bidder.
- 2.4 The party filing the protest must have actually submitted a Bid on the Project. A subcontractor of a party to a Bid on this Project may not submit a Bid Protest. A bidder may not rely on the Bid Protest submitted by another Bidder, but must timely pursue its own protest.
- 2.5 The procedure and time limits set forth in in the City's bid documents are mandatory and are the Bidder's sole and exclusive remedy in the event of a Bid Protest. The Bidder's



failure to fully comply with these procedures shall constitute a waiver of any right to further pursue the Bid Protest, including filing of a challenge of the award pursuant to the California Public Contracts Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.

- 2.6 The City will review all timely protests prior to its award of the contract. The City shall not be required to hold an administrative hearing to consider timely protest, but may do so at its option. The City will consider merits of the bid protest at the time of its consideration of the contract award. The City may either accept the protest and award the bid to the next lowest responsible bidder or reject the protest and award to the lowest responsible bidder. Nothing in this section shall be construed as a waiver of the City Council's right to reject all bids.
- 2.7 The City reserves the right to waive any bid irregularities not affecting the amount of the bid, except where such waiver would give the low bidder an advantage or benefit not allowed other bidders.

**3. Substitution of "or equal" Bid Items**

In accordance with California Public Contract Code Section 3400, where the technical specifications or Project plans list products by manufacturer's name, brand or model number such information indicates the quality and utility of the items desired and does not restrict bidders to that manufacturer's name, brand or model number, unless the technical specifications or Project plans specify that the listed product is necessary to match others in use on a particular public improvement either completed or in the course of completion. Except where the Specifications indicate that a particular brand product is necessary to match others in use, when a manufacturer's name, brand or model number is listed, it shall be construed to be followed by the words "or equal" whether or not those words in fact follow the manufacturer's name, brand name or model number listed in the technical specifications or Project plans. Unless the technical specifications or Project plans indicate that a particular brand product is necessary to match others in use, bidders may propose equals of products listed by manufacturer name, brand name or model number.

Complete information for products proposed as equals must be submitted to the City for review at least five (5) working days before the time specified for the bid opening. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the City to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. Failure to bid products specified by manufacturer name, brand name or model number where the technical specifications or Project plans specify that a particular product is necessary to match others in use, or where no proposal concerning products proposed as equals has been submitted in accordance with this provision may render a bid non-responsive.

4. **Subcontracting**

Bids must be in accordance with the requirements of the Subletting and Subcontracting Fair Practices, Act, California Public Contract Code Section 4100 and following. Bids must include a completed list of proposed subcontractors on the form included in the Proposal. The lists of must include the name, business location, the portion (type or trade), and dollar amount of work to be subcontracted (including special fabrication and installation of a portion of the work) valued in excess of **one half (½) of one (1) percent** of the total Project bid price, or ten thousand dollars (\$10,000), whichever is greater. Bids that fail to include complete lists of proposed subcontractors in accordance with Public Contract Code Section 4100 and this provision may be deemed non-responsive.

For any portion of the Project work with a value of more than one half (½) of one (1) percent of the total Project bid price for which no subcontractor is listed, bidders certify by submitting their bids that they are qualified to perform that portion of the Project work and that they will perform that portion of the Project work with their own forces. Bidders may not substitute another subcontractor for a subcontractor listed in their bid except as permitted by the City in accordance with Section 4107 and following of the California Public Contract Code.

# PROPOSAL

## CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS

**Bidder's Name:** \_\_\_\_\_

### TO CITY OF MONTE SERENO, as CITY:

In accordance with CITY's Notice Inviting Bids, the undersigned BIDDER hereby proposes to furnish all materials, equipment, tools, labor, and incidentals required for the above stated project as set forth in the Contract Documents, and to perform all work in the manner and time prescribed.

BIDDER declares that this proposal is based upon careful examination of the work site, Project Plans and other Contract Documents, including the Notice Inviting Bids, this Proposal, Contract Agreement Documents, Special Provisions, Technical Provisions, General Conditions, Standard Plans & Specifications. If this proposal is accepted for award, BIDDER agrees to enter into a contract with the CITY at the unit and/or lump sum prices set forth in the following Bid Schedule. BIDDER understands that failure to enter into a contract in the manner and time prescribed will result in forfeiture to the CITY of the Bid Bond/security accompanying this proposal.

BIDDER understands that a bid is required for the entire work that the estimated quantities set forth in the Bid Schedule are solely for the purpose of comparing bids, and that final compensation under the contract will be based upon the actual quantities of work satisfactorily completed. It is agreed that the unit and/or lump sum prices bid include all appurtenant expenses, federal, state and local taxes, royalties, and fees. In the case of discrepancies in the amounts bid, unit prices shall govern over extended amounts.

BIDDER agrees and acknowledges that s/he is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the BIDDER will comply with such provisions of that code before commencing the performance of this Contract if awarded it.

BIDDER certifies to be properly licensed by the State of California as a contractor to perform work of this specialty. The undersigned agrees to furnish CITY satisfactory proof of ability to perform the work, as well as records of performance of similar jobs completed recently, if and when requested to do so by the City or its authorized agent.

BIDDER agrees that the insurance and bonding requirements set forth can and will be fulfilled.

BIDDER declares that the only persons or parties interested in this proposal as principals are those named herein; that no officer, agent, or employee of CITY is personally interested, directly or indirectly, in this proposal; that this proposal is made without connection to any other individual, firm, or corporation making a bid for the same work; and that this proposal is in all respects fair and without collusion or fraud.

BIDDER certifies that in all previous contracts or subcontracts, all reports which may have been due under the requirements of any agency, State, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

BIDDER certifies that affirmative action (if required on this project) has been taken to seek out and consider disadvantaged business enterprises for those portions of the work to be subcontracted, and that such affirmative actions have been carefully documented, that said documentation is open to inspection, and that said affirmative action will remain in effect for the life of any contract awarded hereunder.

BIDDER shall guarantee all work for a minimum period of one year from project acceptance. The guarantee shall be in the form of a Maintenance Bond (10% of completed work cost) to be provided to CITY prior to project acceptance.

The following documents have been completed and executed, and are hereby made a part of this Contract by reference:

- BID SCHEDULE & ADDENDA ACKNOWLEDGEMENT
- DEBARMENT CERTIFICATION
- NON-COLLUSION DECLARATION
- IRAN CONTRACTING CERTIFICATION
- DESIGNATION OF SUBCONTRACTORS
- CONTRACTOR LICENSE INFORMATION
- EXPERIENCE AND REFERENCES
- EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION
- BIDDER'S SIGNATURE PAGE
- BIDDERS BOND

**BID ITEM LIST FOR  
CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS**

<b>Bid Item No.</b>	<b>Item Description</b>	<b>Estimated Quantity</b>	<b>Units</b>	<b>Item Price</b>	<b>Total</b>
1	Water Pollution Control	1	LS		
2	Traffic Control and Construction Area Signs	1	LS		
3	Adjust Sanitary Manhole to Grade (Revocable)	3	EA		
4	Adjust Water Valve Box Cover to Grade (Revocable)	4	EA		
5	Relocate Water Meter (Revocable)	1	EA		
6	Relocate Mailbox	4	EA		
7	Adjust Utility Box Cover to Grade	8	EA		
8	Remove Concrete Curb and Gutter	97	LF		
9	Remove Tree	1	EA		
10	Remove Existing Vegetation	1	LS		
11	4" AC Over 4" AB Roadway Reconstruction	29,100	SF		
12	2" Wedge Grind	520	SF		
13	Conform Grind	710	SF		
14	2" Asphalt Overlay	8450	SF		
15	Remove Wood curb	75	LF		

16	Remove & Replace Traffic Striping & Markings	1	LS		
17	Construction Staking and Surveys	1	LS		
18	PCC Rolled Curb	1450	LF		
19	PCC Driveway	715	SF		
20	Paver Driveway	28	SF		
21	Concrete Valley Gutter	8	LF		
22	AC Dike	80	EA		
23	Concrete Driveway Conform	2310	SF		
24	Asphalt Concrete Driveway Conform	560	SF		
25	Native Soil Conform	630	SF		
26	Walkway Conform	155	SF		
27	Reset Sign and Pole	1	EA		

Abbreviations: LF = Linear Feet; SF = Square Feet; CY = Cubic Yards; EA = Each; LS=Lump Sum; TN=tons

**GRAND TOTAL BID (ITEMS #1-27): \$ \_\_\_\_\_**

**Grand Total Bid  
in Words:** \_\_\_\_\_

The undersigned declares, by their signature to this proposal, that the bidder has checked carefully all of the above figures and understands that the City shall not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

If this Proposal shall be accepted and the undersigned should fail to execute the contract with the City as aforesaid or should fail to provide the "Faithful Performance" Surety Bond in the sum of

one hundred percent (100%) of the contract amount, the "Labor and Material Payment" Surety Bond in the sum of one hundred percent (100%) of the contract amount, proof of insurance covering Public Liability and Property Damage in amounts satisfactory to the City Attorney, proof of Workmen's Compensation Insurance in the amount and form prescribed by the State of California, within ten (10) days (not counting Sundays and legal holidays) after the date of City's notice to the bidder of the contract award, the City may, at its option, determine that the bidder has abandoned the Contract, thereupon this Proposal and the acceptance thereof shall be null and void, and the forfeiture of any security accompanying this Proposal shall operate and the same shall become the property of the City of Monte Sereno, State of California.

Accompanying this Proposal is \_\_\_\_\_  
(insert the words "Cashier's Check", "Certified Check", or "Bidder's Bond", as the case may be, made out to the City of Monte Sereno), in amount equal to at least ten percent (10%) of the total bid.

Bidders must, upon request, furnish evidence of their financial responsibility and ability to perform the work herein described.

The Bidder agrees to accept as full payment for the construction of the Project the amount computed in accordance with the bid schedule prices, which include all costs for labor, materials, tools, equipment, services, taxes, insurance, overhead, profit, warranty performance and all other costs necessary to perform the work in accordance with the Contract Documents. Bid prices shall be shown in figures for individual item totals and in both words and figures for the total bid. In case of discrepancy between words and figures for total amount, the words shall prevail. If erasures or other changes appear on this proposal, each such erasure or change must be initialed by the person signing the bid.

Any federal, state or local tax payable on articles to be furnished shall be included in the prices bid and shall be paid by the Contractor. The City is exempt from federal excise tax and will provide a certificate of exemption to Contractor upon request.

The City reserves the right to reject any and all proposals and/or waive any irregularity in any proposal received.

Unless otherwise required by law, no bidder may withdraw his proposal for a period of ninety (90) calendar days after the date set for receipt thereof.

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## ADDENDA ACKNOWLEDGEMENT

The Bidder hereby acknowledges that Bidder has received the following attached Addenda, No(s): \_\_\_\_\_, and agrees that all Addenda issued are a part of the Contract Documents. The Bidder acknowledges that this Proposal includes all impacts resulting from these Addenda. **(Bidder: Insert the number of each addendum received and attach a signed copy of each addendum to this Proposal).**



## **DEBARMENT CERTIFICATION**

### **CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS**

(To be submitted with Bid)

By submitting its bid the bidder certifies in accordance with California Public Contract Code Section 6109 that neither the bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109, contractors and subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on public works projects.

**NON-COLLUSION DECLARATION  
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

**CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS**

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 \_\_\_\_\_[date], at \_\_\_\_\_[city], \_\_\_\_[state].”

\_\_\_\_\_  
Signature of Bidder or Representative of Bidder

## IRAN CONTRACTING CERTIFICATION

Section 2200 et seq. of the California Public Contract Code prohibits a person from submitting a proposal for a contract with a public entity for goods and services of \$1,000,000 or more if that person is identified on a list created by the Department of General Services (DGS) pursuant to Section 2203(b) of the California Public Contract Code. The list will include persons providing goods or services of \$20,000,000 or more in the energy sector of Iran and financial institutions that extend \$20,000,000 or more in credit to a person that will use the credit to provide goods or services in the energy sector in Iran. DGS is required to provide notification to each person that it intends to include on the list at least 90 days before adding the person to the list.

In accordance with Section 2204 of the California Public Contract Code, the undersigned hereby certifies that:

It is not identified on a list created pursuant to Section 2203(b) of the California Public Contract Code as a person engaging in investment activities in Iran described in Section 2202.5(a), or as a person described in Section 2202.5(b), as applicable; or

It is on such a list but has received permission pursuant to Section 2203(c) or (d) to submit a bid or proposal in response to this Proposal

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed. This certification is made under the laws of the State of California.

---

Proposer/Bidder Firm Name (Printed)

---

By (Authorized Signature)

---

Printed Name and Title of Person Signing

---

Date Executed

---

Executed in the County and State of

**DESIGNATION OF SUBCONTRACTORS**  
 (To be filled-in by the bidder and submitted with Bid)

**CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS**

The following information is in accordance with the provisions of Section 4104 of the Public Contract Code of the State of California.

Name Under Which Sub-Contractor is Licensed	License Number & Classification	DIR Registration Number	Location of the Place of Business	Description of Subcontract Work	Sub-Contractor Total Amount

Do not list *alternate* subcontractors for the same work. The undersigned agrees to furnish proof that all contractors and subcontractors performing any work related to this improvement are complying with all the requirements of Social Security Legislation, both State and Federal, and also agrees to conform with the provisions of Sections 4100 to 4113, inclusive, of the State Public Contract Code, as amended, concerning subcontractors and subcontracts.

**CONTRACTOR LICENSE INFORMATION**  
(To be filled-in by the bidder and submitted with Bid)

**CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS**

The bidder acknowledges that the license required for performance of the **CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS** is a Class A license.

The bidder holds the following California State Contractors License(s):

1. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
2. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
3. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
4. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
5. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_

**Bidder's Taxpayer Identification No.**

\_\_\_\_\_

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

(To be filled-in by the bidder and submitted with Bid)

(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

The bidder \_\_\_\_\_, proposed subcontractor \_\_\_\_\_, hereby certifies that he has \_\_\_\_\_, has not \_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 61-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontractors which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previously contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**BIDDER'S SIGNATURE PAGE**

**CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS**

The undersigned hereby declares that the cost of all necessary items for completion of this project are included in the unit prices quoted, all incidentals have been taken into consideration even though said incidentals are not specifically listed in the specifications or shown on the plans. The undersigned is likewise aware of the fact that distances, quantities and other estimated figures appearing on the plans or mentioned in the specifications or on the Proposal are only approximate and declares that the unit prices shown above for the various items of work are based on distances and quantities calculated as the result of actual measures performed at the site project.

Respectfully Submitted, Date: \_\_\_\_\_

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

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

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

Business Phone: \_\_\_\_\_ Residence Phone: \_\_\_\_\_

Is Bidder Currently Certified DBE? YES  NO

Contractor's License No. \_\_\_\_\_ Class \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Bidder is a\* \_\_\_\_\_  
If a partnership, names of partners. If a corporation, names of President or Vice President, and the Secretary or Asst. Secretary.

**Name** **Address**

I (we) hereby state and declare, under the penalty of perjury under the laws of California, that the representatives made herein are true and correct.

Executed \_\_\_\_\_ at \_\_\_\_\_ California.  
Date Location

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

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

\*Please state whether the bidder is an individual, a partnership, a corporation or an individual doing business under a fictitious name. If the bidder is a corporation, the following is required:

- 1. Signatures of two corporate offices; or,
- 2. A certified copy of the corporation bylaws and a resolution of the Board of Directors which gives authority to the officers signing this agreement to execute contracts on behalf of the corporation

**BIDDER'S BOND**

(To be filled-in by the bidder and submitted with Bid)

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

KNOW ALL MEN BY THESE PRESENTS:

That we,

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, Telephone No.)

as Principal, and

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, Telephone No.)

as Sureties, are held and firmly bound unto the City of Monte Sereno, State of California,

as Obligee, in the penal sum of

\_\_\_\_\_  
(State in words)

(\$\_\_\_\_\_) for the payment whereof we hereby bind ourselves, our successors, heirs, executors or administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that, whereas the Principal is about to file with and submit to the City of Monte Sereno a bid or proposal for the performance of certain work, said work being **CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS** in compliance with the plans and specifications therefore, under an invitation of the City contained in a notice or advertisement for bids or proposals, now, therefore, if the bid or proposal of the Principal shall be accepted and if said work be thereupon awarded to the Principal by the City and if the Principal shall enter into a contract with the City in accordance with said bid or proposal, and files the two bonds with the City, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, or if said bid or proposal is rejected, then this bond shall be void and of no effect; otherwise it shall remain in full force and effect.

(Signatures on the next page)



In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Sureties shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Surety

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_  
being each duly sworn says for himself and not one for the other that he is one of the sureties named in the foregoing bond and that he executed the same and is worth not less than double the penal sum mentioned therein over and above all statutory exemptions.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**BIDDER’S REFERENCES**

(To be submitted with or within 72 hours of the bid opening)

The apparent lowest and the next two apparent lowest bidders shall provide the following information for up to six (6) of its public works projects that have been completed in the last three (3) years.

All names and references must be current and verifiable. References will be checked. Provide the following information:

- 1) Has a public agency determined the bidder’s bid not responsible or denied a contract to the bidder?**

\_\_\_\_\_

(State Yes or No and provide details)

\_\_\_\_\_

- 2) Has any stop notices filed against the bidder within the last five (5) years?**

\_\_\_\_\_

(State Yes or No and provide details)

\_\_\_\_\_

- 3) Completed Contract Information:**

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

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

\_\_\_\_\_

(Owner, Contact name and current phone number)

\_\_\_\_\_

\_\_\_\_\_

(Construction Manager, Contact name and current phone number)

\_\_\_\_\_

\_\_\_\_\_

(Description of Project, Scope of Work Performed)

\_\_\_\_\_

\_\_\_\_\_

(Contract Award Amount)

---

(Contract Change Order Amount & Details)

Original Completion Date: \_\_\_\_\_ Time Extensions (days): \_\_\_\_

Actual Completion Date: \_\_\_\_\_

---

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

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

---

(Owner, Contact name and current phone number)

---

(Construction Manager, Contact name and current phone number)

---

(Description of Project, Scope of Work Performed)

---

(Contract Award Amount)

---

(Contract Change Order Amount & Details)

Original Completion Date: \_\_\_\_\_ Time Extensions (days): \_\_\_\_

Actual Completion Date: \_\_\_\_\_

*Use separate sheets for additional contracts*

## **FORMS, AGREEMENTS, BONDS AND CERTIFICATIONS**

### **BID PROTEST PROCEDURE**

Any protest of the proposed contract award must be submitted in writing to the City no later than 5:00 p.m. on the third business day following the date of the bid opening. The protest must include the name, address, and telephone number of the person representing the protesting party.

1. The protest must contain a complete statement of the basis for the protest and refer to the specific portion of the contract documents or the specific statute that forms the basis for the protest.
2. The party filing the protest must concurrently transmit a copy of the protest to the proposed awardees.
3. The party filing the protest must have submitted a bid for the Project. A subcontractor of a party filing a bid for the Project may not submit a bid protest.
4. Any bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing of a challenge of the award pursuant to the California Public Contract Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.

The City shall review all timely protests prior to award of the contract. The City shall not be required to hold an administrative hearing to consider any protests, but may do so at its option. At the time of the City Council's consideration of the Project award, the City Council shall also consider the merits of any timely protests. The City Council may either reject the protest and award to the lowest responsible bidder or accept the protest and award the bid to the next lowest responsible bidder. Nothing in this section shall be construed as a waiver of the City Council's right to reject all bids

**AGREEMENT FOR PUBLIC IMPROVEMENTS**  
(Post Bid Submittal)

**CLARA STREET AND NATALYE DRIVE STREET IMPROVEMENTS**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the City of Monte Sereno, a municipal corporation and political subdivision of the State of California, ("City") and \_\_\_\_\_, a \_\_\_\_\_ ("Contractor").<sup>1</sup>

This Agreement is made under the following circumstances:

RECITALS

City has taken appropriate proceedings to authorize (i) the construction of the public work and improvements as described in the Contract Documents (as hereinafter defined) and (ii) the execution of this Agreement. The public improvements described in the Contract Documents are hereinafter referred to as "Public Improvements." The Public Improvements, together with the labor, equipment, supplies, materials, and other items or services required to produce the Public Improvements, are hereinafter referred to as the "Public Work."

A notice was duly published for bids to construct the Public Improvements.

OR Bidding was not required for this project.

On \_\_\_\_\_, 20\_\_, after notice duly given, the City Council of City found that Contractor was the lowest responsible bidder for the Public Work and awarded the contract for the construction of the Public Improvements to Contractor.

OR On \_\_\_\_\_, 20\_\_, the City Council of City awarded to Contractor the contract for the construction of the Public Improvements.

City and Contractor desire to enter into this Agreement for the construction of the Public Improvements.

NOW, THEREFORE, the parties agree as follows:

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<sup>1</sup>The term "Contractor" as used herein is employed without distinction as to either number or gender and shall include whenever the context shall permit all agents, representatives, employees, servants, subcontractors, and business or social invitees.

## 1. The Contract Documents

a. The complete contract consists of the following documents, all of which together are the “Contract Documents”: (i) the bound “Contract Documents and Specifications” for the project identified on page 1 of this Agreement (including, but not necessarily limited to, Notice to Bidders; Proposal; Bid Security Form; Bidder’s Bond; Statement of Experience and Qualifications; List of Subcontractors; Non-Collusion Declaration; Agreement for Public Improvements [sometimes referred to as “this Agreement” or “the Agreement”] and any documents, such as Certificates of Insurance, required by this Agreement; Faithful Performance Bond; Payment [Labor and Materials] Bond; Special Provisions; Technical Specifications; and the Appendix-Standard Details for Public Construction), (ii) the accepted bid (i.e., the accepted Proposal), (iii) the complete plans, (iv) the Standard Details, and (v) all executed versions of the above-listed documents.

b. All rights and obligations of City and Contractor are fully set forth and described in the Contract Documents. Contractor shall thoroughly examine and become familiar with all of the various parts of these Contract Documents and determine the nature and location of the Public Work, the general and local conditions, and all other matters which can in any way affect the Public Work. Failure to make an examination necessary for this determination shall not release Contractor from the obligations of the Contract Documents. No oral agreement or conversation with any officer, agent, or employee of City or with City’s City Engineer either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained.

c. All of the Contract Documents are intended to be complementary, so that any work called for in one and not mentioned in the other, or vice versa, is to be executed as if mentioned in all of the Contract Documents. In the event of any inconsistency between any provisions of the Contract Documents, the City Engineer shall determine which provision prevails.

d. When the Contract Documents describe portions of the Public Work in general terms, but not in complete detail, it is understood that the best general practice shall be followed and only materials and workmanship of the best standard quality shall be used. Any labor, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied, whether or not specifically called for. Words that have a well-known technical or trade meaning shall be interpreted in accordance with that meaning.

e. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws, or regulations in effect on the first published date of the Notice to Bidders, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of City or Contractor, or any of their consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to City, or any of City’s consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the Public

Work or any duty or authority to undertake responsibility contrary to the other provisions of the Contract Documents.

f. Contractor shall furnish the following bonds (“Contract Bonds”):

(1) Performance bond in an amount not less than one hundred percent (100%) of the amount of the Contract Price, as defined in Section 25, to secure faithful performance of the Contract Documents and the guarantees against defective workmanship, materials, or both during the warranty period following final acceptance of the Public Improvements by City.

(2) Payment bond in an amount not less than one hundred percent (100%) of the Contract Price, to secure payment of all persons supplying labor or materials for the construction of the Public Improvements.

2. Equipment; Performance of Public Work. Contractor shall furnish all tools, equipment, apparatus, facilities, services labor, and materials necessary to construct and complete the Public Improvements and perform the Public Work in a good and workmanlike manner, in strict conformity with and as required by the Contract Documents and subject to the approval of the City Engineer of City or the Engineer’s designated representative.

3. Permits and Care of the Public Work.

a. Contractor has examined the site of the Public Work and is familiar with its topography and condition, location of property lines, easements, building lines, and other physical factors, and with any limitations affecting the performance of this Agreement.

b. If the Public Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall, as set forth in California Public Contract Code Section 7104, promptly and before the following conditions are disturbed, notify City in writing of any:

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

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(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 Documents.

c. City shall promptly investigate the conditions and shall issue a Change Order, pursuant to the provisions of this Agreement, if City finds that the conditions do materially so differ or do involve hazardous waste and therefore do cause a decrease or increase in Contractor’s cost of, or time required for, performance of any part of the Public Work.

d. In the event that a dispute arises between City 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 Public Work, Contractor shall not be excused from any scheduled completion date provided for in the Contract Documents, but shall

proceed with all work to be performed under the Contract Documents. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

e. Contractor, at Contractor's expense, shall obtain any permission necessary for any operations conducted off the property that is owned or controlled by City. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

4. Permits; Business License Contractor shall, at Contractor's expense, obtain all necessary permits and licenses for the construction of each part of the Public Improvements, give all necessary notices, and pay all fees and taxes required by law. Contractor shall obtain and maintain in effect a business license from City until City has accepted the Public Improvements.

5. Excavation of Trenches As required by Labor Code Section 6705, in advance of excavation, Contractor shall submit to the City Engineer a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches. If such plan varies from the OSHA shoring system standards, the plan shall be prepared by a registered civil or structural engineer. A shoring, sloping, or protective system that is less effective than that required by the Construction Safety Orders shall not be used. The plan submitted by Contractor shall not be implemented until accepted by the City Engineer or by a registered civil or structural engineer, employed by City, to whom authority to accept has been delegated.

6. Superintendence by Contractor.

a. Contractor shall personally supervise the Public Work or have a competent foreman or superintendent (with authority to act for Contractor), satisfactory to the City Engineer, overseeing the Public Work (including, but not limited to, enforcing good discipline) and on site at all times while the Public Work is being done. Contractor shall designate, in writing, before starting work, a project superintendent who shall be an employee of Contractor and shall have complete authority to represent and act for Contractor. Contractor shall notify the City Engineer in writing prior to any change in superintendent assignment.

b. Contractor shall be solely responsible for and have control over construction means, methods, techniques, and procedures for providing adequate safety precautions and coordinating all portions of the Public Work, unless the Contract Documents give other specific instructions concerning these matters.

7. Responsibility for Public Work and Materials. Until the acceptance of the Public Improvements, Contractor shall have the charge and care of the Public Work, including, but not limited to, the materials to be used therein, including materials for which he has received partial payment, and shall bear the risk of injury, loss, or damage to any part of the Public Work by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Public Work. Relief from maintenance and responsibility for a portion of the total Public Work will not be granted by City, unless specifically provided for in the Special



Provisions. Contractor shall rebuild, repair, or restore all injuries, losses, or damages to any portion of the Public Work occasioned by any cause before completion and acceptance of the Public Improvements and shall bear the expense thereof. Should such injuries, losses, or damages be caused by a third party, Contractor shall remain responsible and shall pursue on its own any proper response or payment by such third party for the injury, loss, or damage. Where necessary, Contractor shall, at its expense, provide suitable drainage and erect such temporary structures as are necessary to protect the Public Work from damage. The suspension of the Public Work for any cause whatsoever shall not relieve Contractor of its responsibility for the Public Work as herein specified. Contractor shall properly store materials which have been partially paid for by City. Such storage by Contractor shall be on behalf of City, and City shall at all times be entitled to the possession of such materials, and Contractor shall promptly return the same to the site of the Public Work when requested. Contractor shall not dispose of any of the materials so stored except on written authorization from the City Engineer.

8. Inspection by City. Contractor shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the Public Work and to the shops wherein Public Work is in preparation.

9. Inspection and Testing of Materials.

a. No mill or factory inspection and testing of materials to be supplied by Contractor under this Agreement shall be performed by City, except as may otherwise be provided in the Technical Provisions. City's decision not to inspect or test shall not relieve Contractor of any obligation to adhere to the Contract Documents. Materials to be used in the Public Work shall be subject to on-site inspection and tests by the City Engineer or his or her designated representative. Contractor shall furnish, without charge, such samples as may be required and shall make available locations for required in-place testing.

b. Materials and work shall be tested in accordance with the methods in use by the State of California, Department of Transportation, or by nationally recognized testing organizations or as specified in the Contract Documents. The City Engineer shall make or approve all testing. Unless otherwise noted in the Contract Documents, testing shall be made at the expense of Contractor. In any case, in the event that any material or work fails to pass the tests, the cost of subsequent testing of similar materials and work as may be required by the City Engineer shall be borne by Contractor.

c. Whenever a specification, manual, or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of such reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test report shall supplement the inspection, sampling, and testing provisions of this Section and shall not constitute a waiver of City's right to inspect. When material that cannot be identified with specific test reports is proposed for use, the City Engineer may, at his or her discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by Contractor at its expense. The number of such samples and test specimens shall be entirely at the discretion of the City Engineer.

10. Certificate of Compliance.

a. A Certificate of Compliance shall be furnished prior to the use of any materials for which the Contract Documents require that such Certificate be furnished. In addition, the City Engineer may permit the use of certain materials prior to sampling and testing if accompanied by a Certificate of Compliance stating that the materials involved comply in all respects with the requirements of the Contract Documents. The Certificate shall be signed by the manufacturer of the material. A Certificate of Compliance shall be furnished with each lot of material delivered to the Public Work and the lots so certified shall be clearly identified in the Certificate.

b. All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve Contractor of the responsibility for incorporating material into the Public Improvements that conforms to the requirements of the Contract Documents, and any such material not conforming to such requirements shall be subject to rejection whether in place or not. City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

11. Changes in the Public Work.

a. City, without notice to the sureties and without invalidating any provision of the Contract Documents, may order changes in the Public Work within the general scope of the Contract Documents by altering, adding to, or deducting from the Public Work, and the Contract Price shall be adjusted accordingly, except as set forth in paragraph b of this Section.

b. Conditions may arise during the prosecution of the Public Work necessitating minor variations in the provisions of the Contract Documents. In order to address these conditions, City may, without notice to the sureties and without invalidating any provision of the Contract Documents, make minor alterations, deviations, or changes to any such provision of the Contract Documents, without affecting any of the material or basic terms of the Contract Documents, including, but not limited to, the Contract Price, time for performance, as set forth in Section 13, schedule, as set forth in Section 14, and the basic design. No Change Order, as defined in paragraph c of this Section, shall be required for changes made pursuant to this paragraph b. Contractor shall make such minor alterations, deviations, or changes in the Public Work (as called for by the minor alterations, deviations, or changes to the Contract Documents) which shall be documented in City’s inspection notes along with documentation of Contractor’s agreement thereto.

c. With the exception of minor changes not involving a significant extra cost (as described in paragraph b of this Section) and minor changes necessitated by emergency in order to protect persons, property, or the Public Work, all changes shall be performed only following the issuance of a written Contract Change Order (“Change Order”) by City. Contractor may request a Change Order, but no changes to the Public Work shall be undertaken by Contractor until the requested Change Order is executed by City.

d. In addition to stating the work to be altered, all Change Orders also shall state (1) whether the time for performance is to be adjusted and, if so, the amount of the adjustment; and (2) the basis for any adjustment in the Contract Price agreed to by both City and Contractor. The price adjustment may be on the basis of unit prices stated in Contractor's bid, a lump sum payment, time and materials, or other basis agreed to by City and Contractor and stated in the Change Order (an "Executed Change Order").

e. If City and Contractor are unable to agree on a basis for the price adjustment, City shall issue a Change Order stating the work to be altered and Contractor shall perform the work. Contractor shall keep detailed records of the labor, materials, and equipment used or saved in connection with the change and makes such records available to City. City, at its option, shall adjust the Contract Price by using unit prices stated in Contractor's bid or the actual necessary cost of the change work, plus fifteen percent (15%) to cover overhead, superintendence, general expense, contract administration, and profit.

f. If the Contract Price is reduced by alteration of the Public Work, Contractor shall not be entitled to compensation based on loss of anticipated profit from the altered or deleted work.

g. Contractor's disagreement with City's determination of the need for, or amount of, an adjustment in the Contract Price, in the time for performance, as set forth in Section 13, or in the schedule, as set forth in Section 14, associated with an approved Change Order, (or Contractor's disagreement with City's determination that a change has not occurred and no Change Order is needed) shall not, under any circumstances, relieve Contractor from its obligation promptly to begin and diligently to prosecute the Public Work, including the change, as described in the Change Order issued by City or the change made pursuant to paragraph b of Section 11.

## 12. Requests for Information.

a. Should it appear that the Public Work to be done or any of the matters relative thereto is not sufficiently detailed or explained in the Contract Documents, Contractor shall apply to the City Engineer for such further written explanations as may be necessary and shall conform to them as part of the Contract Documents. In the event of any doubt or question arising respecting the true meaning of the Contract Documents,

b. City may back charge Contractor for the time and expense associated with unnecessary requests for information ("RFIs") filed by Contractor. Unnecessary RFIs are those whose answers are already included in the Contract Documents or those which have previously been answered by the City Engineer or his or her designee.

## 13. Time for Performance.

a. The City Engineer shall deliver to Contractor a notice to proceed (the "Notice to proceed"), specifying the time for commencement of the Public Work, and Contractor shall not begin before such time. If there is more than one location for the Public Work, a separate Notice to proceed shall be given for each location. Should Contractor begin work in advance of receiving the Notice to Proceed, any work performed by Contractor in advance of such notice shall be

considered as having been done by Contractor at its own risk and as a volunteer. The Public Improvements shall be completed on or before the date specified in the Special Provisions applicable to the Public Work.

b. A working day is defined as any day (except Saturdays, Sundays, legal holidays recognized by the City of Monte Sereno and days on which the Contractor is specifically required by the specifications to suspend construction operations.

14. Schedule. All work shall be performed under the City Engineer's direction in accordance with an appropriate schedule provided to the City Engineer by Contractor. The schedule shall be consistent with the Contract Documents, including, but not limited to, the prescribed completion date.

15. Emergency; Additional Time for Performance; Procurement of Materials. If, because of war or other declared emergency, the federal or state government restricts, regulates, or controls the procurement and allocation of labor or materials, or both, and if solely because of the restrictions, regulations, or controls, Contractor is, through no fault of Contractor, unable to prosecute the Public Work or perform this Agreement, or the Public Work is thereby suspended or delayed, any of the following steps may be taken:

a. City may, pursuant to resolution of the Council, grant Contractor additional time to prosecute the Public Work, sufficient to compensate in time, for the delay or suspension. To qualify for such extension of time, Contractor, within ten (10) days of Contractor's discovering such inability to perform, shall notify the City Engineer in writing thereof and give specific reason therefore. The City Engineer shall thereupon have sixty (60) days within which to procure such needed materials or labor as is specified in the Contract Documents, or permit substitution, or provide for changes in the Public Work in accordance with other provisions of the Contract Documents. Substituted materials, or changes in the Public Work, or both, shall be ordered in writing by the City Engineer and the concurrence of the Council shall not be necessary. All reasonable expenses of such procurement incurred by the City Engineer shall be defrayed by Contractor; or

b. If such necessary materials or labor cannot be procured through legitimate channels within sixty (60) days after Contractor files the above notice, either party may, upon thirty (30) days' written notice to the other, terminate this Agreement. In such event, Contractor shall be compensated for all of the Public Work executed, upon a "unit" or "cost-plus ten percent (10%)" basis, whichever is the lesser, Materials on the ground, in process of fabrication or en route upon the date of notice of termination specially ordered for the Public Work and which cannot be utilized by Contractor, shall be compensated for by City at cost, including freight, provided that Contractor shall take all steps possible to minimize this obligation; or

c. City Council, by resolution, may suspend this Agreement until the cause of inability to perform is removed, so long as such extension does not exceed (30) days. If this Agreement is not terminated and the inability of Contractor to perform continues, without fault on Contractor's part, beyond the time during which the Agreement may have been suspended, as hereinabove provided, City Council may further suspend this Agreement, or either party hereto may, without incurring any liability, elect to declare this Agreement terminated upon the ground of impossibility of

performance. In the event that City declares this Agreement terminated, the declaration shall be authorized by the City Council, by resolution, and Contractor shall be notified in writing thereof within five (5) days after the date of the resolution. In such case, Contractor shall be entitled to the portion of the Contract Price attributable to the portion of the Public Work which has been performed; or

d. City may terminate this Agreement, in which case Contractor shall be entitled to the portion of the Contract Price attributable to the portion of the Public Work which has been performed. Such termination shall be authorized by resolution of the City Council. Notice thereof shall be forthwith given in writing to Contractor, and this Agreement shall be terminated upon receipt by Contractor of such notice. In the event of such termination, none of the covenants, conditions, or provisions of this Agreement shall apply to the Public Work not performed, and City shall be liable to Contractor only for the proportionate compensation described in the prior paragraph.

16. Rights of City to Increase Working Days. If Contractor anticipates that the Public Improvements will not be completed by the time specified in Section 13 of this Agreement and no Change Order has been executed dealing with the matter, Contractor may file an application for extension of time with the City Clerk, which shall be addressed to the City Council. If the application for extension of time is filed at least thirty (30) days prior to the deadline for completion of the Public Improvements under Section 13 of this Agreement, the City Council may increase the number of working days to the number it determines will best serve the interests of City. If City does increase the number of working days, City shall have the further right to charge to Contractor, and deduct from the final payment for the Public Work, City's actual cost of engineering, inspection, and other overhead expenses which are directly chargeable to Contractor and which accrue during the period of such extension.

17. Legal Work Day; Penalties for Violation.

a. As set forth in Section 1810 of the Labor Code of the State of California, eight (8) hours of labor shall constitute a legal day's work.

b. Section 1813 of the Labor Code provides that "The contractor or subcontractor shall, as a penalty to the [City], forfeit twenty-five dollars (\$25) for each worker employed in the execution of [this Agreement] by [Contractor] for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of [Sections 1810 through 1817 of the Labor Code]." Section 1813 further provides that the above language shall be part of any contract for public work awarded by City.

c. Section 1815 of the Labor Code provides that "Notwithstanding the provisions of Section 1810 to 1814 inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 ½ times the basic rate of pay."

d. Based on the above provisions of the Labor Code, the following is made a part of this Agreement: Except as allowed by Section 1815 of the Labor Code, Contractor shall not require or permit more than eight (8) hours labor in a day from any worker employed by Contractor in the performance of work. Contractor shall forfeit as a penalty to City the sum of TWENTY FIVE DOLLARS (\$25.00) for each worker employed in the execution of this Agreement by Contractor or by any of its subcontractor(s) for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in violation of the provisions of Section 1813 of the Labor Code, except as permitted by Section 1815 of the Labor Code.

18. Labor Nondiscrimination. Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM  
(GOV. CODE, SECTION 12990)

Your attention is called to the "Nondiscrimination Clause", set forth in Section 7-1.01A(4), "Labor Nondiscrimination," of the Standard Specifications, which is applicable to all nonexempt state contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth therein. The Specifications are applicable to all nonexempt state construction contracts and subcontracts of \$5,000 or more.

19. Prevailing Wage Rates. As required by Section 1773.2 of the Labor Code, copies of the prevailing rate of per diem wages (obtained from the Director of the Department of Industrial Relations) are on file at the City Engineer's office and shall be made available to any interested party on request. A copy of the prevailing rate of per diem wages shall be posted at each job site.

20. Buy America Requirements. Attention is directed to the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements. A Certificate of Compliance, conforming to the provisions in Section 6-1.07, "Certificates of Compliance," of the Standard Specifications, shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the above exceptions.

The requirements imposed by the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of the materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The Contractor

shall furnish the Engineer acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporating the materials into the work.

21. Payroll Records. Contractor and each of its subcontractors shall keep accurate payroll records as described in Section 1776 of the Labor Code and shall make such records available for inspection and furnish copies upon request as required by Section 1776. Contractor shall inform City of the location of the payroll records, including street address, city, and county, and shall advise City within five (5) working days of any change of location and address.

22. NOT USED

23. NOT USED

24. NOT USED

25. NOT USED

26. Authority of City Engineer The City Engineer shall decide all questions that may arise as to

- a. the quality or acceptability of materials furnished and work performed,
- b. the manner of performance and rate of progress of the work,
- c. the interpretation of the Contract Documents,
- d. the acceptable fulfillment of the Contract Documents on the part of Contractor, and
- e. Compensation and contract time.
- f. The City Engineer shall have authority to reject work that does not conform to the Contract Documents.

27. Correction; Removal of Rejected Work.

a. Contractor shall promptly correct work rejected by the City Engineer as failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed, or completed, so that it does comply with the Contract Documents. Contractor shall bear the costs of correcting such rejected work, including additional testing, inspections, and compensation for the City Engineer's services and expenses made necessary thereby.

b. Any work done beyond the lines shown on the drawings contained in the Contract Documents or established by the City Engineer, and all extra work done without written authority, shall be considered as volunteer or unauthorized work. Upon order of the City Engineer, unauthorized work shall be remedied, removed, or replaced at Contractor's expense.

c. If Contractor fails to promptly correct nonconforming or rejected work, or to comply promptly with any order of the City Engineer under this Section, City may cause such work to be remedied, removed, or replaced and the costs thereof to be deducted from any monies due or to become due to Contractor.

d. The City Engineer's failure to reject nonconforming work shall not be construed as acceptance of such work.

28. City's Right to Stop the Work. If Contractor does not promptly correct work that is not in accordance with the requirements of the Contract Documents or if Contractor persistently fails to carry out work in accordance with the Contract Documents, the City Engineer may, in writing, order Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated. Contractor shall immediately comply with a written order of the City Engineer to stop the work. The work stopped shall be resumed as and when ordered by the City Engineer.

29. Claims.

Contractor shall submit claims and follow the claims procedure as more fully set forth in the General Provisions of the Contract Documents.

30. Contract Price.

a. In full payment for the Public Work, City shall pay, and Contractor shall accept the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) (the "Contract Price"). If the Contract Price is increased or decreased pursuant to this Agreement, the increased or decreased amount shall be the Contract Price.

b. The Contract Price is determined by the unit or fixed prices contained in Contractor's bid. The quantities and unit or fixed prices are set forth in the Proposal in the Contract Documents. In the event that any work is performed or materials furnished, in compliance with Section 11, in addition to those set forth in the Contract Documents, such work and materials shall be paid for at the prices contained therein.

c. The Contract Price shall be paid in installments as hereinafter provided.

d. The Contract Price includes full compensation for all taxes which Contractor is required to pay or withhold, whether imposed by Federal, State, or local government, including, but not necessarily limited to, Federal excise, sales, and use taxes and employee withholding.

31. Payments to Contractor.

a. Periodically during the progress of the Public Work, as agreed by Contractor and the City Engineer, Contractor shall submit to the City Engineer a complete itemized statement of (i) all labor and materials incorporated into the Public Improvements during the period occurring since submission of the last such statement and (ii) the portion of the Contract Price applicable thereto. Upon the City Engineer's written approval of the statement, it shall be paid by City. City



shall make payment within 30 days of receipt of application, less five percent retention, for satisfactory work performed during the period covered by the statement.

b. Contractor shall accept the compensation provided in the Contract Documents as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed Public Work and for performing all work contemplated and embraced under the Contract Documents; also for loss or damage arising from the nature of the Public Work, or from the action of the elements, or from any unforeseen difficulties that may be encountered during the prosecution of the Public Work until the acceptance by the City; and for all risks of every description connected with the prosecution of the Public Work, as well as for all expense incurred in consequence of the suspension or discontinuance of the Public Work as herein specified; and for completing the Public Work according to the Contract Documents. Neither the payment of any estimate nor of any retained percentage shall relieve Contractor of any obligation to make good any defective work or materials. No compensation shall be made in any case for loss of anticipated profits.

c. City may retain out of any amount due to Contractor sums sufficient to cover claims and stop payment notices served upon City under Part 6 of the California Civil Code or any other provisions of law allowing or requiring withholding of payments to cover claims.

d. City may retain out of any amount due to Contractor sums that are designated by the Contract Documents as being so retainable.

### 32. Subcontracting

Attention is directed to the provisions in Section 8-1.01, "Subcontracting," and Section 2, "Proposal Requirements and Conditions," and Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions. Pursuant to the provisions in Section 1777.1 of the Labor Code, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations web site at [http://www.dir.ca.gov/dir/Labor\\_law/DLSE/Debar.html](http://www.dir.ca.gov/dir/Labor_law/DLSE/Debar.html).

The provisions in the third paragraph of Section 8-1.01, "Subcontracting," of the Standard Specifications, that the Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the original contract price, is not changed by the Federal Aid requirement specified under "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions that the Contractor perform not less than 30 percent of the original contract work with the Contractor's own organization.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions.

This requirement shall be enforced as follows:

a. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

### 33. Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

### 34. Payment Requests and Retention – Prompt Payment of Funds Withheld to Subcontractors

a. All payment applications shall be accompanied by the appropriate waiver and release form as set forth in Civil Code sections 8132, 8134, 8136, or 8138. The City shall hold five percent (5%) retainage of the Contract Price from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. In the event that City specifically allows Contractor to except any claims from the operations of the release, there shall be retained by City stated amounts to be set forth therein and approved by the City Engineer. If any claims are filed against the Public Work, City shall withhold final payment until the validity of such claims shall have been properly determined. In this regard City is hereby empowered to pay directly to claimant the full amount of any valid claims. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

b. Pursuant to Section 22300 of the California Public Contract Code and to the extent permitted by Section 22300, securities may be substituted for any monies withheld by a public agency to ensure performance under a contract. Any monies for which securities have been substituted shall be paid to Contractor. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with a financial institution approved by City's Director of Finance or with a state or federally chartered bank in California as the escrow agent. The escrow agent shall release such securities to Contractor following the expiration of thirty (30)

days from the date of filing of a Notice of Completion by City, unless the securities are to be withheld by City to correct defective work or otherwise complete the Contract Documents or are subject to withholding by City to satisfy stop work notices or other claims and costs associated therewith.

c. Alternatively, Contractor may request and City shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and Contractor shall receive the interest earned on the investments upon the same terms provided for in Section 22300 for securities deposited by Contractor. The escrow agent shall release such securities (together with any interest and payments received by the escrow agent from City) to Contractor following the expiration of thirty (30) days from the date of filing of a Notice of Completion by City, unless the securities (including any payments received by the escrow agent from City and not yet invested into securities) are to be withheld by City to correct defective work or otherwise complete the Contract Documents or are subject to withholding by City to satisfy stop work notices or other claims and costs associated therewith.

d. Securities eligible for investment under this Section shall be those listed in California Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, and any other security mutually agreed to by Contractor and City.

e. In the event that securities are used pursuant to this Section, City and Contractor shall execute an escrow agreement substantially similar to the Escrow Agreement For Security Deposits in Lieu of Retention set forth in Section 22300.

f. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

g. In the event of any amendment to Section 22300 of the California Public Contract Code, the provisions of this Section shall be deemed to include such amended language.

### 35. Final Payment.

a. Contractor shall notify the City Engineer in writing when it considers the Public Improvements complete and shall request a final inspection, which the City Engineer shall make.

b. Obtain, complete, and submit the “Final Report Utilization of Disadvantaged Businesses Form” (Exhibit 17-F of the Caltrans’ Local Assistant Procedural Manual).

c. After the City Engineer has made the final inspection and determined that the Public Improvements have been completed in all respects in accordance with the Contract Documents, Contractor shall prepare and submit a final Change Order, if any, and a proposed final invoice in writing, prepared in a form acceptable to the City Engineer. The final Change Order shall document any changes in the Public Work not covered by previous Change Orders and shall comply with the applicable provisions of Section 11. The proposed final invoice shall show the

proposed total amount of compensation payable to Contractor, including an itemization of that amount segregated as to contracted-for item quantities, extra work, and other bases for payment. The proposed final invoice shall also show all deductions made or to be made for prior payments and amounts to be kept or retained under the Contract Documents.

d. After receipt of an acceptable final Change Order and an acceptable final invoice, the City Engineer shall recommend to the City Council that the Public Improvements be accepted by City. (Any use by City of any part of the Public Improvements prior to formal acceptance by City shall not constitute acceptance by City and shall not relieve Contractor from full responsibility for correcting defective work or materials.) Immediately upon and after such formal written acceptance by City, Contractor shall be relieved of the duty of maintaining the Public Work as a whole, and Contractor shall not be required to perform any further work thereon except as provided concerning guarantees of work and correction of work during warranty period.

e. Contractor's acceptance of final payment shall constitute a waiver and release of all claims by Contractor against City related to the Public Work, except for claims previously made in writing and verified as unsettled by Contractor at the time of submission of the final invoice and not subsequently settled prior to final payment. (This release shall be interpreted as meaning a release that is permitted under Section 7100 of the California Public Contract Code.) The making of final payment, however, shall not operate to release Contractor or its sureties from obligations arising under the Contract Documents. Specifically, the making of final payment shall not constitute a waiver and release of claims by City arising from (a) unsettled or future liens, (b) failure of the Public Work to comply with the Contract Documents, (c) the terms of any warranties required by or contained in the Contract Documents, (d) the right to any insurance proceeds or the right to make any insurance or bond claims, (e) any claims with respect to Contractor's obligation of indemnity provided for in the Contract Documents, or (f) any latent defect or fraud.

### 36. Option of City to Terminate Agreement in Event of Failure to Complete Public Improvements.

a. If (a) Contractor refuses or fails to prosecute the Public Work, or any severable part thereof, with such diligence as will insure completion of the Public Improvements within the time specified, or any extensions thereof, (b) Contractor fails to complete the Public Improvements within the time specified by Section 13 or Section 16, as applicable, of this Agreement, (c) Contractor is adjudged a bankrupt, makes a general assignment for the benefit of Contractor's creditors, (or if a receiver is appointed in the event of Contractor's insolvency), or (d) if Contractor, or any subcontractor, violates any of the provisions of the Contract Documents, the City Engineer or the City Council may give written notice to Contractor and to Contractor's sureties of City's intention to terminate this Agreement. The notice shall contain the reasons for the intention to terminate this Agreement. Unless, within five (5) days after delivery of the notice, the violation ceases or satisfactory arrangements for its correction are made, City may terminate this Agreement.

b. Upon termination of this Agreement, Contractor shall, unless otherwise instructed in writing by the City Engineer, do the following:

- (1) Stop all work under the Contract Documents;
- (2) Remove equipment from the work site(s), as directed by the City Engineer;
- (3) Take such action as is necessary to protect the Public Work from damage;
- (4) Notify all subcontractors and suppliers that this Agreement is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the City Engineer;
- (5) Provide the City Engineer with an inventory of all materials previously produced, purchased, or ordered from suppliers for use in the Public Work and not yet so used, including the storage locations and such other information as the City Engineer may request;
- (6) Dispose of materials not used in the Public Work as directed by the City Engineer;
- (7) Provide City with good title to all materials purchased by City hereunder, including materials for which partial payment has been made, with bills of sale or other documents of title for such materials;
- (8) Subject to the prior written approval of the City Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder;
- (9) To the extent directed by the City Engineer, assign to City all the right, title, and interest of Contractor under subcontracts or orders for materials terminated hereunder;
- (10) Provide the City Engineer with any documentation required to be furnished by Contractor for projects involving state and/or federal funds or otherwise required under state or federal law or regulation or under this Agreement to be furnished by Contractor;
- (11) Take such other actions as the City Engineer may direct.

### 37. Liquidated Damages.

a. If the Public Improvements in all parts and respects are not finished and completed in accordance with Section 13 or Section 16, as applicable, of this Agreement, City will sustain damages which will be impracticable and extremely difficult to ascertain and determine. In lieu of actual damages, Contractor shall pay to City the sum set forth in the Special Provisions applicable to the Public Work. Such monies shall be liquidated damages. At its option, City may deduct the amount of such liquidated damages from any monies due or that may become due Contractor pursuant to this Agreement.

b. Contractor shall not be assessed with liquidated damages for the cost of engineering and inspection occasioned by the delay beyond the time named for the completion of the Public Improvements caused by fires, floods, earthquakes, or other natural disasters or acts of God, epidemics, quarantine restrictions, acts of terrorism or of the public enemy, acts of City, strikes

not based upon unfair employment practices of Contractor, freight embargoes, delays of subcontractors due to such causes, or by inclement weather or conditions resulting immediately from adverse to the conduct of the construction at that point, as determined by the City Engineer; provided, however, that Contractor shall notify the City Engineer in writing of the cause of delay, within ten (10) days from the beginning of the delay, and the City Engineer shall ascertain the facts and the extent of the delay, and his or her findings of fact shall be final and conclusive.

c. If Contractor is delayed because of alterations in the Public Improvements made by City (which are not contemplated by this Agreement), the time of completion shall be extended as stated in any Executed Change Order, and Contractor shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges, or other penalties. Contractor shall have no claim for any other compensation for any such delay other than as may be set forth in the Executed Change Order.

38. Patents. Contractor shall assume all costs arising from or in connection with or related to the use of patented materials, equipment, devices, or processes, used on or incorporated in the Public Work and shall indemnify City, the City Engineer, and their duly authorized representatives and save them harmless from all suits at law or actions of every nature for, on account of, in connection with, or relating to the use of patented materials, equipment, devices, or processes. In case such materials, equipment, devices, or processes are held to constitute an infringement and their use enjoined, Contractor, at its expense, shall: (a) secure for City the right to continue using such materials, equipment, devices, or processes, or (b) replace them, or (c) modify them so that they become non-infringing, or (d) or remove the enjoined materials, equipment, devices, or processes and refund to City the sum paid therefore without prejudice to any other rights of City or the City Engineer.

39. Performance by Sureties. In the event of any termination under this Agreement, City shall immediately give written notice thereof to Contractor and Contractor's sureties and such sureties shall have the right to take over and perform this Agreement. It is provided, however, that if such sureties, within five (5) days after receiving the notice of termination, do not give City written notice of their intention to take over the performance of this Agreement and do not commence performance thereof within five (5) days after notice to City of such election, City may undertake the Public Work and prosecute the same to completion by contract or by any other method City may deem advisable, for the account, and at the expense, of Contractor. The sureties shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City may, without liability for so doing, take possession of and utilize in completing the Public Work such materials, appliances, plant, and other property belonging to Contractor as may be on site of the Public Work and necessary therefore. Should Contractor contract in an individual capacity, Contractor shall require that the surety bond contain the following provision: "Should Contractor contract in his or her individual capacity, the death of Contractor shall not relieve the surety of its obligations."

40. Contract Security. Concurrently with the execution hereof, Contractor shall furnish: (a) a surety bond in an amount equal to at least one hundred percent (100%) of the Contract Price as security for the faithful performance of the Contract Documents; and (b) a separate surety bond in an amount equal to at least one hundred percent (100%) of the Contract Price as security for the

payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Sureties on each of the bonds and the form thereof shall be satisfactory to City and be approved by the City Engineer.

41. Responsibility for Damage; Indemnification.

a. Neither City nor any of its elective or appointive boards, bodies, or commissions or members thereof or City's employees, officers, agents, representatives, or consultants (including, without limitation, engineers and attorneys) shall be liable, responsible, answerable, or accountable in any manner for any of the following ("Potential Liabilities and Claims"):

(1) Damage to the Public Work or any part thereof,

(2) Personal injury (including, without limitation, physical injury, mental or emotional injury or distress, and loss of consortium), including, without limitation, personal injury to any of the following ("Potential Claimants"):

- i. Contractor,
- ii. subcontractors,
- iii. consultants,
- iv. the owner, lessees, sub-lessees, tenants, and other occupiers of the property where the Public Work is being performed or of any property in the vicinity of such property,
- v. employees, agents, representatives, business invitees of any of the foregoing,
- vi. any third person and members of the public
- vii. City, members of its elective or appointive boards, bodies, or commissions, its employees, officers, agents, representatives, and consultants (including, without limitation, engineers and attorneys),

(3) Wrongful death to any person including, without limitation, to Potential Claimants,

(4) Property damage to the real, personal, or intangible property of any person, firm, or entity, including, without limitation, that of any Potential Claimant, or

(5) Business losses and business interruption losses suffered by any owners, lessees, sub-lessees, tenants, or other occupiers of the real property where the Public Work is being performed or of any property in the vicinity of such property.

b. To the maximum extent permitted by law, Contractor shall be responsible for and shall indemnify, defend, and hold harmless City, its elective and appointive boards, bodies, and commissions and members thereof, and its officers, employees, agents, representatives, and

consultants, including, without limitation, the City's engineers and attorneys ("City Indemnitees"), from and against any claim, demand, action, cause of action, cost, expense, liability, fine, penalty, judgment, lien, loss, and damage of any kind whatsoever (including, without limitation, the Potential Liabilities and Claims), arising directly or indirectly from, or in connection with or relating to, (i) Contractor's or any of Contractor's subcontractors' activities, actions, conduct, or operations under the Contract Documents or in performing the Public Work, whether such activities, actions, conduct, or operations be by Contractor or by any of the subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Contractor or any subcontractor, (ii) any breach or failure of Contractor to perform its obligation or duties under the Contract Documents, or (iii) from any other cause whatsoever during the progress of the Public Work or at any time before the final completion and acceptance of the Public Improvements. The Contractor shall not be required to defend or indemnify for such claims that arise from the sole negligence, willful misconduct, or active negligence of the City Indemnitees only to the extent required by Civil Code section 2782. The duty of Contractor to indemnify and hold harmless includes the duties to defend (by legal counsel satisfactory to City) as set forth in Section 2778 of the Civil Code and to pay attorney's fees and litigation costs required by such defense.

c. With respect to third party claims against Contractor, to the maximum extent permitted by law, Contractor waives any and all rights to any type of express or implied indemnity against City, its elective and appointive boards, bodies, and commissions and members thereof, and its officers, employees, agents, representatives, and consultants (including, without limitation, engineers and attorneys). It is the intent of the parties that Contractor's duties of defense and indemnity shall apply and be in full force and effect regardless of the existence or degree of negligence or other fault on the part of the parties indemnified or on the part of any other person, firm, or entity, except that such duties of defense and indemnity shall not apply with respect to the active negligence or willful misconduct of City, its elective and appointive boards, bodies, and commissions and members thereof, and its officers, employees, agents, representatives, and consultants (including, without limitation, engineers and attorneys). Should any part of the indemnity provisions of this Agreement be held invalid or unenforceable, Contractor shall nonetheless be responsible to indemnify and defend and save each of the indemnities hereunder harmless to the maximum extent provided by law. The requirements of this provision shall survive termination of this Agreement.

d. The above indemnification by Contractor shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of or in connection with or related to any of the operations of Contractor or any subcontractor, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

#### 42. Insurance.

a. Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors, the following minimum scope and insurance, at least as broad as follows:



(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$5,000,000 per accident for bodily injury and property damage.

(3) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

(4) Builder’s Risk (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions, unless waived by the City.

b. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

c. Self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

d. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(2) For any claims related to this project, the Contractor’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

(3) Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.

e. Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

f. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

g. Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

h. Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

i. Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

#### 43. Guaranty of Work.

a. Notwithstanding inspections and acceptance by City of work furnished under the Contract Documents, Contractor warrants to City that all materials and equipment furnished under the Contract Documents, including that provided pursuant to Change Orders, will be of good quality and new, that the Public Improvements will be free from defects in material or workmanship, and that the work furnished under the Contract Documents will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

b. This warranty by Contractor is in addition to any warranties or guarantees required by the Special Provisions or Technical Specifications for specified items of equipment or materials. This warranty shall be in effect notwithstanding any disclaimers or limiting or conditional terms contained in such separate warranties furnished by manufacturers or suppliers.

44. One Year Guaranty Upon Final Acceptance.

a. Upon final acceptance of the Public Improvements, the following guaranty shall become operative: Contractor shall repair or replace, at its own expense, any part of the Public Improvements that at any time during a One (1) year period subsequent to the date of the final acceptance becomes damaged or defective because of faulty workmanship or defective materials or any part of the Public Improvements found not to be in accordance with the Contract Documents, specifically including, but not limited to, the provisions of Section 40. Contractor shall make the necessary corrections promptly after written notice from City to do so and shall pay for any damage to other property resulting from such nonconforming work.

b. Upon final acceptance of the Public Improvements, Contractor shall file with City a corporate surety bond in the sum of ten percent (10%) of the final Contract Price (including all Change Orders) to secure this guaranty to City or deposit with the City an equivalent amount of cash for the one year period.

c. In the event that Contractor fails (within a reasonable time after request therefore) to make any repairs or replacements required by this Section 41 (or in the event of an emergency when delay could cause risk of damage or loss), City may undertake the repairs and replacements with its own forces or through contract, and Contractor shall reimburse City for any and all costs of the repairs or replacements, even if the cost exceeds the principal sum of the corporate surety bond or retention which is security for the performance of this guaranty. Contractor and its surety may provide the foregoing guaranty in the original performance bond. City's records setting forth the fair and reasonable cost of repairing, replacing, or restoring the damage or defect when performed by any party other than Contractor shall be binding and conclusive as to the amount thereof upon Contractor.

d. Nonconforming work that is remedied under this Section shall be subject to an extended warranty obligation, identical in terms to that provided by Section 40 and by this Section 41, for a period of one (1) year after the nonconforming work has been remedied.

e. Nothing in this Section 41 shall be construed to establish a period of limitation with respect to other obligations that Contractor may have under the Contract Documents. Establishment of the period of two years as described in this Section relates only to the specific obligation of Contractor to correct the work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the work.

45. Non collusion Declaration. In the event that this Agreement is awarded pursuant to a bid made by Contractor, the “Non collusion Declaration To Be Executed By Bidder And Submitted With Bid” is hereby made a part of this Agreement as required by Public Contract Code section 7106.

46. Assignment of Clayton Act and Cartwright Act Rights. As required by Section 7103.5(c) of the California Public Contract Code, the following verbatim reproduction of Section 7103.5(b) of the California Public Contract Code is included in this Agreement and made part thereof: “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 right, 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 acknowledgment by the parties.”

This Agreement is a public works contract to supply goods, services, or materials; Contractor is the contractor; and City is the awarding body. Therefore, Contractor and City are bound by the provisions of Section 7102.5(b) of the California Public Contract Code.

47. Provisions Cumulative. The provisions of this Agreement are cumulative, and in addition to and not in limitation of, any other rights or remedies available to City.

48. Notices. All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid addressed as follows:

If to City:  
Attn: City Engineer  
City of Monte Sereno  
18041 Saratoga-Los Gatos Road  
Monte Sereno, CA 95030

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to sureties of Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Escrow Agent of Contractor, if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

49. Interpretation. As used herein, any gender includes each other gender, the singular includes the plural and vice versa.

50. Compliance with Law. Contractor shall comply with all policies, rules, regulations, ordinances, statutes, and other law applicable to any work performed pursuant to the Contract Documents, including, but not limited to, those related to air and water quality, pollution, pesticides, noise, and the California Environmental Quality Act.

51. Independent Contractor. Contractor shall independently perform all work under this Agreement and shall not be considered as an agent or employee of City, nor shall Contractor's subcontractors or employees be considered as subagents of City.

52. Assignment.

a. The performance of the Contract Documents may not be assigned except upon the written consent of City. Consent will not be given to any proposed assignment that would relieve the original Contractor or its surety (ies) of their responsibilities under the Contract Documents nor will City consent to any assignment of a part of the work under the Contract Documents.

b. Contractor may assign monies due or to become due Contractor under the Contract Documents and, to the extent permitted by law and to the extent such monies are available, City shall recognize the assignment if given timely notice thereof, but any assignment of monies shall be subject to all proper set-offs in favor of City and to all deductions provided for in the Contract Documents. Notwithstanding the foregoing, all money withheld, whether assigned or not, shall be subject to being used by City for the completion of the Public Work in the event that Contractor should be in default therein.

53. Governing Law. The Contract Documents shall be subject to and governed by the law of the State of California.

54. Severability. In the event that any of the provisions or portions thereof, of this Agreement or any other part of the Contract Documents is held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforcement of the remaining provisions or portions thereof shall not be affected thereby.

55. Entire Agreement. This Agreement and the rest of the Contract Documents contain the entire understanding between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement and the rest of the Contract Documents that are not fully expressed herein.

56. Modification or Amendment. Except as the Contract Documents may specifically provide otherwise, this Agreement and the rest of the Contract Documents may be modified or amended only by a writing signed by both parties hereto.

57. Successor Parties. This Contract Documents shall inure to the benefit of and be binding upon the parties, their heirs, legal representatives, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first hereinabove written.

CITY OF MONTE SERENO

CONTRACTOR

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

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

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Name)

**CONSTRUCTION PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, **City of Monte Sereno**, a political subdivision of the State of California (**Owner**) has awarded to **(Name of Contractor)** \_\_\_\_\_, as Principal, a Construction Services Agreement, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (**Agreement**), titled \_\_\_\_\_ PROJECT, in the amount of \$ \_\_\_\_\_, which Agreement is by this reference made a part hereof, for the work described as follows:

**(Describe Agreement Work)**\_\_\_\_\_.

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement, guaranteeing the faithful performance thereof;
3. NOW, THEREFORE, we, the undersigned Principal and \_\_\_\_\_ as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Agreement, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Agreement made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Agreement, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.
5. No extension of time, change, alteration, modification, or addition to the Agreement, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.
6. Whenever Principal shall be and declared by Owner in default under the Agreement, Surety shall promptly remedy the default, or shall promptly:
  - 6.01 Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
  - 6.02 Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, reasonably acceptable to Owner, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The

term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Owner to the Principal under the Agreement and any amendments thereto, less the amount Owner paid to Principal.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others. Surety may not use Contractor to complete the Agreement absent Owner's written consent.
8. No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.
9. Surety may join in any proceedings brought under the Agreement and shall be bound by any judgment.
10. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: (Corp. Seal)

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code



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

**CONTRACTOR'S LABOR AND MATERIAL BOND**

(To Be Submitted with the Agreement)

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, the **City of Monte Sereno**, a political subdivision of the State of California (**Owner**) has awarded to **(Name of Contractor)** \_\_\_\_\_, as Principal, a Construction Services Agreement, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ (**Agreement**), titled THE \_\_\_\_\_ PROJECT located at \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, which Agreement is by this reference made a part hereof, for the work described as follows:

**(Describe Agreement Work)** \_\_\_\_\_.

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
3. NOW, THEREFORE, we, the undersigned Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM (\$ \_\_\_\_\_), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
5. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection

with the Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

- 8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: (Corp. Seal)

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

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## **GENERAL PROVISIONS**

### **SECTION I** **DEFINITION OF TERMS**

1. **Bidder.** Any individual, firm or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
2. **Calendar Day.** A calendar day shall be any day including all legal holidays, Saturdays, and Sundays.
3. **City.** The City of Monte Sereno, State of California, acting through the City Council, or other duly authorized agents.
4. **Contract.** The written agreement covering the performance of the work. The complete contract includes the Agreement for Public Improvements, the Notice Inviting Bids, the proposal, plans, specifications, contract bonds, and all supplemental agreements affecting the work.
5. **Contractor.** The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, who have entered into the contract with the City, or the City's legal representative.
6. **Engineer or Works Engineer.** The duly appointed Engineer of the City of Monte Sereno, acting directly or through properly authorized agents limited by the particular duties entrusted to them.
7. **Inspector.** The Inspector or Inspectors of the Engineer of the City of Monte Sereno, limited by the particular duties entrusted to them.
8. **Notice of Award.** Written notice from the City to the successful lowest responsive and responsible bidder stating that upon compliance with all contract prerequisites and conditions, the City will execute the Contract with that bidder for the Work.
9. **Notice to Proceed.** Written notice from the City to the Contractor setting a date on which Contract time will start and authorizing the Contractor to proceed with the Work.
10. **Plans.** The drawings, or reproduction thereof, approved by the Engineer, pertaining to the work, and made a part of the contract, including County's Standard Drawings and Caltrans' Standard Plans dated May 2010.
11. **Specifications.** The information, directions, provisions, and requirements pertaining to the work, and contained herein including Special Provisions, Technical Specifications, General Provisions, those administrative subsections of Caltrans' Standard Specifications that are

specifically referenced in this Contract and the non-administrative sections (Sections 10 through 95) of Caltrans' Standard Specifications dated May 2010.

12. The Work. The improvement, structure, project, or construction contemplated in the contract, the furnishing of all necessary labor, materials, tools and other devices, and the doing or performing by the Contractor of all things required to be done for the fulfillment of the contract as provided therein.
13. Working Day. A working day is defined as any day, except as follows:
  - a. Saturdays, Sundays and Legal Holidays;
  - b. Days on which the Contractor is prevented by inclement weather or conditions resulting immediately there from adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations;
  - c. Days on which the Contractor is prevented, by reason of requirements in the "Maintaining Traffic and Working Hours" section of the Special Provisions, from working on the controlling operation or operations for at least 60 percent of the total daily time being currently spent on such controlling operation or operations;
  - d. The current controlling operation or operations are defined to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer, which if delayed or prolonged, will delay the time of completion of the Work; or
  - e. Legal Holidays are defined as those holidays observed by the City of Monte Sereno as specified in the current Memorandum of Understanding (MOU) between the City of Monte Sereno and the American Federation of State, County and Municipal Employees, Local 1569, AFL-CIO, except that half holidays in the MOU shall be considered full holidays under the Contract.

## SECTION II PROPOSAL REQUIREMENTS

1. General Information. Sealed proposals, addressed to the City Clerk of the City of Monte Sereno, will be received, publicly opened at the time, date and place stated in the Notice to Inviting Bids and read aloud.

A bid may be withdrawn at any time prior to the time and date fixed in the Notice Inviting Bids for the opening of the bids provided that a request in writing, executed by the bidder or the bidder's duly authorized representative. Such bid withdrawal will not prejudice the right of a bidder to file a new bid.

2. Proposal Form. Bid must be submitted on the form provided by the City in its Notice Inviting Bid Documents (or in the same format). Completed filled out Proposal form and its required attachments included in the Proposal Documents Section shall be submitted before the bid opening time and date.

Unit price as well as the extended price (unit price multiplied by the number of units shown on the proposal form) must be provided for each bid item bid. In the case of any discrepancy in the extended price for any bid item, the unit price multiplied by the number of units shall prevail. In the event of any discrepancy between the total contract amount and the sum of the extended prices of all items, the sum of the extended prices of all items shall prevail.

The proposal shall set forth the item prices and totals, in clearly legible figures, in the respective spaces provided and shall be signed by the bidder, who shall fill out all blanks in the proposal form as therein required.

The bidder shall also fill out all blanks in the proposal forms for any alternative to the project proposed by the City; failure to do so may, in the City's sole discretion, result in the proposal being considered non-responsive and rejected on that basis.

3. Bid Prices to Cover Entire Work. Payment for the work done under this contract shall be as set forth on the Bidder's Sheet for Proposal. Bidder shall include the entire cost of the work contemplated in the contract, as required by the plans, drawings, specifications, Special Provisions, and General Provisions: and, furthermore, it shall be understood and agreed that the cost of all labor, materials and equipment and all incidentals expense of whatever nature necessary to complete the Work is included.

Any part of the Work which is not mentioned in the Specifications, and/or in the Special Provisions, but is shown on the plans, or any part not shown on the plans but described in the Specifications and/or in the Special Provisions, or any part not shown in the plans nor described in the Specifications or Special Provisions, but which is reasonably implied by either, or is necessary or usual in the performance of such work, shall be performed as incidental work, without extra cost to the City, by the Contractor as if fully described in

the Specifications or Special Provisions and shown on the plans, and the expense thereof shall be included in the total bid.

4. Examination of Plans, Specifications, Special Provisions, and Site of Work. The bidder is required to examine carefully the work site and the bid documents, conduct independent investigations and collect other information to determine the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, and as to the requirements of the specifications, the special provisions and the contract. It is mutually agreed that submission of a proposal shall be considered prima facie evidence that the bidder has made such examination.

The City will not be responsible for any loss or unanticipated cost incurred by the Contractor as a result of the Contractor's failure to estimate in advance all conditions pertaining to the Work, including underground pipelines and sewers that may have to be relocated.

5. Proposal Guaranty. All bids shall be presented under sealed cover and shall be accompanied by cashier's check, certified check, or bidder's bond, made payable to the City of Monte Sereno, for the amount not less than ten per cent (10%) of the amount of said bid, and no bid shall be considered unless such proposal guarantee is enclosed therewith.
6. Rejection of Proposals Containing Alterations, Erasures, or Irregularities. Proposals may be rejected if they show any alterations of form, additions not called for, conditional or alternative bids, incomplete bids, erasures, or irregularities of any kind.
7. Competency of Bidders - Proposal Requirements. Before entering into a contract, the bidder shall satisfy the City that s/he possesses adequate equipment and has the necessary experience and forces to perform the Work in the manner set forth in these specifications. S/He shall be a licensed Contractor in the State of California. A City of Monte Sereno license will be required before the contract for the Work is signed by the City.
8. Subcontractors. Proposals shall comply with the Subletting and Subcontracting Fair Practices Act (Government Code Section 4100 et seq). Pursuant to Section 4104 of said Act, bidder shall in the bid set forth:
  - a. The name and the location of the place of business of each sub-contractor who will perform work or labor or render service to the prime Contractor in or about the construction of the Work or improvement in an amount in excess of one-half of one percent of the prime Contractor's total bid.
  - b. The portion of the Work, which will be done by each such subcontractor under this Act. The prime Contractor shall list only one subcontractor for each of such portions as is defined by the prime Contractor in the Contractor's bid.

**SECTION III**  
**AWARD AND EXECUTION OF CONTRACT**

1. Award of Contract. The City reserves the right to reject any and all proposals. The award of the contract, if it is awarded, will be to the lowest responsible bidder, and will be made within sixty (60) calendar days after the opening of the proposal. All bids will be compared on the basis of the Engineer's cost estimate.
2. Return of Proposal Guaranties. Within ten (10) working days after the execution of the Contract, the City will return the proposal guaranties accompanying the proposals that are not to be considered in making the award. All other proposal guaranties will be held until the contract has been finally executed, after which they will be returned to the respective bidders whose proposals they accompany.
3. Contract Bonds. The bidder to whom the contract is awarded shall execute a bond or security satisfactory to the City for the Faithful performance of the Work in a sum equal to the amount of the contract.

A payment bond or another security satisfactory to the City shall be posted securing the claims of persons employed by the Contractor and the claims of persons who furnish materials, supplies or equipment used or consumed by the Contractor in the performance of the Work. This bond shall be in a sum equal to the amount of the contract.

4. Liability Insurance Required. See Section 14, "Hold-Harmless Agreement and Contractor's Insurance" and Section 15, "Insurance" of the Agreement for Public Services.
5. Execution of Contract. The contract shall be signed by the successful bidder and returned, together with the contract bonds, within ten (10) working days, after the bidder has received the Notice of Award. Failure to execute the contract and file acceptable bonds within the specified time shall be just cause for the annulment of the award and the forfeiture of the proposal guaranty.



## SECTION IV SCOPE OF WORK

1. Work to be done. The work to be done consists of furnishing all labor, materials, methods or processes, implements, tools, and machinery, except as otherwise specified, which are required to construct and put into complete order for use the Work described in the Special Provisions, and to leave the grounds in a neat condition.
2. Safety Program.
  - a. The Contractor shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety and to all requirements as set forth in the State of California Construction Safety Orders (CAL/OSHA), and in particular, Article 3 of these Safety Orders, regarding Accident Prevention and safety meetings. Within ten (10) working days following Notice of Award the Contractor must submit to the City a copy of the Contractor's Safety Plan.
  - b. Full compensation for furnishing all labor, materials, tools and equipment and doing all the work involved in this item of work as above specified, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be made therefore.
3. Removal of Obstructions. The Contract shall remove and dispose of all structures, debris, or other obstructions of any character to the Work to be performed.
4. City Directed Change Orders. The City may, at any time during the progress of the Work, direct any amendments to the Work or any of the Contract Documents. Such amendments shall in no way void the Contract, but will be applied to amend the Contract Price, if such amendments affect the Contract Price, the Project schedule (if such amendments affect the Project schedule), or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment in accordance with this Section IV.
5. Alterations. Subject to the provisions of Section 4-1.03, "Changes" of the Standard Specifications and unless otherwise specified, the City reserves the right to increase or decrease the quantity of any item or portion of the Work or to omit portions of the Work as may be deemed necessary or advisable by the Engineer, also to make such alterations or deviations, additions to, or omissions from the plans and Specifications, as may be determined during the progress of the Work to be necessary and advisable for the property completion thereof. Upon written order of the Engineer, the Contractor shall proceed with the Work as increased, decreased or altered.

When alterations in plans or quantities of work are ordered and performed the Contractor shall accept payment in full at the contract unit price for the actual quantities of work done. No allowance will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as stipulated in such agreements.

6. Contractor Proposed Change Orders. The Contractor shall submit proposed changes to the Engineer no later than 15 days before the proposed change.
7. All Change Orders. All change orders or amendments to Contract Documents must be approved by the Engineer prior to the change or amendment and must be evidenced by a writing executed by authorized representatives of the City and the Contractor. All change order proposals must specify any change in the Project schedule, or any project milestone, including, but not limited to, the Time for Completion, under the change order. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, may be accomplished by the Time for Completion then in effect.
8. Change Order Pricing. Change order pricing for all change orders, whether additive, deductive, or both, will be governed by the following:
  - a. Prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify prices.
  - b. Cost impacts involving items for which the Contract Documents do not specify prices, charges or credits will be paid on a time and materials basis in accordance with the following. All costs listed in this Subsection (b) will constitute incidentals, full compensation for which will be deemed included in the markups for labor, material, and equipment specified below, and no additional compensation for such cost impacts will be allowed:
    - (1) Labor. The Contractor will be paid the cost of labor for workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the Work.
    - (2) Materials. Materials costs will be the direct costs for materials actually exhausted, consumed, or entering permanently into the Work, plus a fixed markup of 15% of such direct materials costs.
    - (3) Equipment. All equipment used will be paid in accordance with the established rates for equipment rental in the Contract Documents, plus a fixed markup of 10% of each such equipment rates.
9. Liability for Unapproved Change Orders. The Contractor will be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that is/are retained pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed according to the terms of this Section IV. The Contractor shall have all of the obligations and the City will have all of the rights and remedies that are specified in these Contract Documents concerning any work or resulting losses, costs, or liabilities pursuant to an unapproved Contractor-proposed change order.

10. Disputes. Disputes between the City and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents. Contractor shall submit claims and follow the claims procedure as more fully set forth in the General Provisions of the Contract Documents.

## SECTION V CONTROL OF WORK

1. Authority of the Engineer. The Engineer shall decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the Work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor; and all questions as to compensation. The Engineer's decision shall be final and he shall have authority to enforce and make effective such decisions and orders as the Contractor fails to carry out promptly.
  2. Conformity with Plans. Finished surfaces in all cases shall conform to the lines, grades, cross-sections and dimensions shown on the approved plans.
  3. Coordination of Plans, Specifications, and Special Provisions. These specifications, general provisions, special provisions, standard specifications, plans and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be cooperative, to describe and to provide for a complete work.
  4. Conflict between Parts of Contract Documents. If there is any conflict between the requirements of the various contract documents, the following shall be the order of precedence (in order from highest precedence to lowest):
    - a. Agreement for Public Improvements
    - b. Special Provisions
    - c. Technical Specifications
    - d. Drawings
    - e. City Standard Drawings
    - f. General Provisions
    - g. Standard Specifications
    - h. Standard Plans
  5. Interpretation of Plans and Specifications. Should it appear that the work to be done or any matter relative thereto are not sufficiently detailed or explained in the these specifications, plans, and the Special Provisions, the Contractor shall apply to the Engineer well in advance of the time a clarification is needed for such further explanations as may be necessary and shall conform to those explanations as part of the contract, so far as may be consistent with the original specifications. The Engineer's decision regarding definitions or clarifications will be final.
- In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.
76. Superintendence. Contractor shall give personal superintendence to the work on said improvements or have a competent foreman or superintendent, satisfactory to the Engineer,

at the work site at all times during progress with authority to act for the Engineer. Whenever the Contractor is not present on any part of the work site where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the Superintendent or foremen in charge of the particular work in reference to which the orders are given.

7. Lines and Grades. Contractor shall be responsible to set lines and grades for construction.
8. Inspection. The Engineer shall at all times have access to the Work during construction, and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials used and employed in the Work. Whenever the Contractor varies the period during which work is carried on each day, he shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer will be subject to rejection.

The inspection of the Work shall not relieve the Contractor of any of the Contractor's obligations to fulfill the contract as prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the Engineer and accepted or estimated for payment.

9. Removal of Defective and Unauthorized Work. All work, which has been rejected, shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense. Upon failure on the part of the Contractor to comply forthwith with any order of the Engineer made under the provisions of this article, the Engineer shall have authority to cause defective work to be removed, and to deduct the costs from any monies due or to become due the Contractor
10. Final Inspection. Whenever the Work provided and contemplated by the contract shall have been satisfactorily completed and the final cleaning up performed, the Engineer will make the final inspection.
11. Record Drawings. The Contractor shall keep and maintain, on the job site, one record set of Drawings. On these, the Contractor shall mark all project conditions, locations, configurations, and any other changes or deviations which may vary from the details represented on the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated in the Contract Documents. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to indicate, fully, the work as actually constructed. These master record drawings of the contractor's representation of as built conditions, including all revisions made necessary by

addenda, change orders, and the like shall be maintained up to date during the progress of the work.

In the case of those drawings which depict the detailed requirements for equipment to be assembled and wired in the factory, such as motor control centers and the like, the record drawing shall be updated by indicating those portions which are superseded by change order drawings or final shop drawings, and by including appropriate reference information describing the change orders by number and the shop drawings by manufacturer, drawing, and revision numbers.

Record drawings shall be accessible to the Engineer at all times during the construction period and shall be delivered to the Engineer upon completion of the Work.

Final payment will not be approved until the Contractor prepared record drawings have been delivered to the Engineer. Said up to date record drawings may be in the form of a set of prints with carefully plotted information as approved by the Engineer. Upon substantial completion of the Work and prior to final acceptance, the Contractor shall complete and deliver a complete set of record drawings to the Engineer for transmittal to the City, conforming to the construction records of the Contractor. This set of drawings shall consist of corrected plans showing the reported location of the Work. The information submitted by the Contractor and incorporated by the Engineer into the Record Drawings will be assumed to be reliable, and the Engineer will not be responsible for the accuracy of such information, nor for any errors or omissions that may appear on the Record Drawings as a result.

12. Cost Reduction Incentive. The Contractor may submit to the Engineer, in writing, proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards. Cost reduction proposals shall contain the following information:
  - a. A description of both the existing contract requirements for performing the Work and the proposed changes.
  - b. An itemization of the contract requirements that must be changed if the proposal is adopted.
  - c. A detailed estimate of the cost of performing the Work under the existing contract and under the proposed change. The estimates of cost shall be determined in the same manner as if the Work were to be paid for on a force account basis as provided in Section IX-14, "Force Account Work" of these General Provisions.
  - d. A statement of the time within which the Engineer must make a decision thereon.

- e. The contract items of work affected by the proposed changes, including any quantity variation attributable thereto.

The provisions of this section shall not be construed to require the Engineer to consider any cost reduction proposal which may be submitted hereunder; proposed changes in basic design of a bridge or of a pavement type will not be considered as an acceptable cost reduction proposal; the City will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this section nor for any delays to the Work attributable to any such proposal. If a cost reduction proposal is similar to a change in the plans or specifications, under consideration by the City for the project, at the time said proposal is submitted or if such a proposal is based upon or similar to Standard Specifications, standard special provisions or Standard Plans adopted by the City after the advertisement for the contract, the Engineer will not accept such proposal and the City reserves the right to make such changes without compensation to the Contractor under the provisions of this section.

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

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

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

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

Contractor, shall be excluded from consideration in determining the estimated net savings in construction costs.

Acceptance of the cost reduction proposal and performance of the work thereunder shall not extend the time of completion of the contract unless specifically provided for in the contract change order authorizing the use of the cost reduction proposal. The amount specified to be paid to the Contractor in the change order which effectuates a cost reduction proposal shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work thereof pursuant to the said change order.

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

This Section V-12, "Cost Reduction Incentive" of these General Provisions shall apply only to contracts awarded to the lowest bidder pursuant to competitive bidding.



## SECTION VI CONTROL OF MATERIALS

1. Source of Supply and Quality of Materials. At the option of the Engineer the source of supply of each of the material shall be approved by the Engineer before the delivery is started. Only materials conforming to the requirements of these specifications and approved by the Engineer shall be used in the Work. Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials. All materials proposed for use may be inspected or tested at any time during their preparation and use. After trial, if it is found that source of supply which have been approved so not furnish a uniform product or if the product from any source proves unacceptable at any time the Contractor shall furnish approved material from other approved sources. No material, which, after approval, has in any way become unfit for use shall be used in the Work.
2. Defective Materials. All materials not conforming to the requirements of these specifications shall be considered as defective and all such materials, whether in place or not, shall be rejected. They shall be removed immediately from the site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval in writing has been given by the Engineer. Upon failure on the part of the Contractor to comply forthwith with any order of the Engineer made under the provisions of this article, the Engineer shall have authority to remove and replace defective material and to deduct the cost of removal and replacement from any monies due or to become due the Contractor.
3. Samples and Tests. Representative preliminary samples of the character and quality prescribed shall be submitted by the Contractor or producer of all materials to be used in the Work, for testing or examination as desired by the Engineer. All tests of materials furnished by the Contractor shall be made in accordance with commonly recognized standards of national organizations and such special methods and tests as are prescribed in these specifications.

The Contractor shall furnish such samples of materials as are requested by the Engineer, without charge. Samples will be secured and tested whenever necessary to determine the quality of material. Contractor shall notify City a sufficient time in advance of the manufacture or production of materials to be supplied by Contractor under this contract in order that City may arrange for mill or factory inspection and testing of same.

Any materials shipped by Contractor from factory prior to having satisfactorily passed such testing and inspection by City's representatives, or prior to the receipt of notice from such representative that such testing and inspection will not be required, shall not be incorporated on the job of said improvements.

Contractor shall also furnish City, in triplicate, certified copies of all required factory and mill test reports.

4. General Materials and Substitutions Requirements.

- a. If the Contractor submitted complete information to the Engineer for products proposed as equals in accordance with the bid package, and the City approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand or model number in the Technical Specifications or Project Plans. The City retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the City to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, and appearance, ease of maintenance and repair, and useful life requirements. If the City does not accept a proposed substitution, the Contractor must furnish the product specified in the Technical Specifications or Project Plans for the Contract Price, regardless of whether the product is specified by manufacturer's name, brand or model number, or otherwise.
- b. During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the City, or with the use of existing City facilities by the public. Materials may not be stored in a manner that presents a safety hazard or a nuisance. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the work site due to weather or other causes. The Contractor must promptly remove from the work site all materials rejected by the City or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the City or its representatives so direct, the Contractor must promptly replace and re-execute work performed by the Contractor and order the replacement and re-execution of work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the City. The Contractor will bear the expense of making good all work destroyed or damaged by such removal. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in this section concerning any failure by the Contractor to replace or re-execute work using non-conforming materials, and/or to make good all work destroyed or damaged by such removal and/or execution.
- c. If any portion of the Work done or material furnished under this Contract proves defective and not in accordance with the Project Plans or Technical Specifications, and if the Engineer determines that the imperfection of the same is not of sufficient

magnitude or importance to make the Work dangerous or undesirable, or if the removal of such work, is impractical or will create conditions which are dangerous or undesirable, the Engineer may retain such work, instead of requiring the imperfect work to be removed and reconstructed, and make such deductions therefore in the payments due or to become due the Contractor as are just and reasonable.

5. Storage or Disposal of Material Outside the Public Right of Way. If the Contractor stores or disposes of material outside of the public right of way, and the City has not made arrangement for storage or disposal of the material, the Contractor shall first obtain written authorization from the property owner on whose property the storage or disposal is to be made and the Contractor shall file with the Engineer the authorization or a certified copy thereof together with a written release from the property owner absolving the City from any and all responsibility in connection with the storage or disposal of material on the property. Contractor must also obtain any necessary permits, licenses and environmental clearances to store or dispose of material on private property. Before any material is stored or disposed of on private property, the Contractor shall obtain written permission from the Engineer to store or dispose of the material at the location designated in the authorization. If the Contractor elects to store or dispose of material subject to this paragraph, the Contractor shall pay those charges that are provided for in the agreement between the owner and the Contractor.

Where the City has made arrangements with owners of land in the vicinity of a project for the storage or disposal of materials on a private owner's property, the arrangements are made solely for the purpose of providing all Bidders an equal opportunity to store or dispose of the materials on the property. Bidders or Contractors may, upon written request, inspect the documents evidencing the arrangements between property owners and the City. The Contractor may, if the Contractor so elects, exercise any rights that have been obtained. If the Contractor elects to store or dispose of materials on private property subject to this paragraph, the use of the private property shall be subject to the terms, conditions, and limitations of the arrangement made between the property owner and the City and the Contractor shall pay those charges that are provided for in the arrangement made by the City with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the Contract sufficient to cover the charges for the material stored or disposed of.

When material is stored or disposed of as provided in this section, and the storage or disposal location is visible from public view, the Contractor shall store or dispose of the material in a neat and uniform manner to the satisfaction of the Engineer. Material storage as used in this section also includes vehicle parking.

6. Construction and Demolition Waste Management Plan (WMP). The City is mandated by the State of California to divert 50% of all solid waste from landfills either by reusing or recycling. To help meet this goal, a City ordinance requires completion of a solid waste management plan (WMP) for covered building and public works projects. The WMP shall identify how at least 50% on non-inert project waste materials and 100% inert materials

will be diverted from the landfill through recycling, reuse and/or salvage. The Contractor shall submit and implement an approved WMP as indicated in the Special Provisions.

**SECTION VII**  
**LEGAL RELATIONS AND RESPONSIBILITY**

1. Laws to be observed. The Contractor shall stay fully informed of all existing and future State and National Laws, including all provisions of Section 1776 of the Labor Code, and Municipal Ordinances and Regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. He shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees. In addition, the Contractor shall meet all standards of the State and Federal Government for air, water and noise pollution. The Contractor shall inform the City of the location of the records enumerated under Section 1776(a) of the Labor Code, including the street address, city and county, and shall within five working days, provide a notice of a change of location and address.

If there is any conflict between these specification and provisions and any laws or regulations, the matter shall be brought to the attention of the Engineer immediately. All necessary permits or approvals from any involved agency shall be obtained by the Contractor before any work is started.

2. Trench Safety and Differing Subsurface Conditions.
  - a. Excavation More Than Four Feet Deep. In accordance with California Public Contract Code Section 7104, if work involves excavation more than four feet deep, the Contractor must promptly notify the City in writing before any of the following are disturbed: any material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; any subsurface or latent physical conditions at the work site different from those indicated; or any unknown physical conditions at the work 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 Documents. The City will promptly investigate any such conditions for which notice is given. If the City finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in the cost or time of performance of the Work, the City will issue a change order pursuant to Section IV-4, "City Directed Change Orders." of these General Provisions. If a dispute arises between the City and the Contractor concerning whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the cost or time of performance, the Contractor shall not be excused from any completion date provided in the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by contract or by law pertaining to the resolution of disputes and protests between the contracting parties.

b. **Excavation of Five Feet or More.** In accordance with California Labor Code Section 6705, if this contract exceeds \$25,000 in cost and involves excavation five or more feet deep must submit for the City's acceptance, prior to excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. No trench safety plan shall be less effective than that required by the Construction Safety Orders and other mandates of the Division of Occupational Safety and Health. If the plan varies from the shoring system standards established by the Construction Safety Orders and other applicable mandates, it must be prepared by a licensed civil or structural engineer. Acceptance by the City of the detailed trench safety plans submitted is only an acknowledgement of the submission and does not constitute review or approval of the designs, design assumptions, criteria, completeness, applicability to areas of intended use, or implementation of the trench safety plans, which are solely the responsibility of the Contractor and the Contractor's Licensed Engineer.

3. **Hours of Labor.** The Contractor shall forfeit, as penalty to the City of Monte Sereno, fifty dollars (\$50) for each worker employed in the execution of the contract by the Contractor or by any subcontractor under the Contractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in violation of the provisions of the Labor Code and in particular, Section 1810 to Section 1816 thereof, inclusive.
4. **Review of Per Diem Rates.** Reference is hereby made to the prevailing rate of per diem wages adopted by the City Council of the City of Monte Sereno in accordance with Labor Code Section 1770 et seq., copies of which are on file in the office of the City Clerk and the Office of the Engineer, City Hall, Monte Sereno, California, and available for inspection by interested parties. If a petition is filed in accordance with Labor Code Section 1773.4 calling for a review of the rates as so established, the closing rate for the submission of bids or the start of work, whichever is applicable shall be extended as in such section provided, and the determination made by the Director of Industrial Relations shall be deemed included in the contract for this Work.
5. **Prevailing Wage.** The wages to be paid for a day's work to all classes of laborers, workmen, or mechanics on the work contemplated by this contract, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where the work hereby contemplates to be performed as determined by the Director of Industrial Relations pursuant to the Director's authority under Labor Code Section 1770 et seq. Each laborer, worker or mechanic employed by a Contractor or by any subcontractor shall receive the wages herein provided for. The Contractor shall pay fifty dollars (\$50) per day penalty for each worker paid less than prevailing rate of per diem wages. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Contractor to each worker.

The City will not recognize any claim for additional compensation because of the payment by the Contractor for any wage rate in excess of prevailing wage rate set forth in the contract. The possibility of wage increases is one of the elements to be considered by the

Contractor in determining the Contractor's bid, and will not, under any circumstances be considered as the basis of a claim against the City on the contract.

NOTE: An error on the part of an awarding body does not relieve the Contractor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775.

- a. Posting of Schedule of Prevailing Wage Rates and Deductions. If the schedule of prevailing wage rates is not attached hereto pursuant to Labor Code Section 1773.2, the Contractor shall post at appropriate conspicuous points at the site of the project a schedule showing all determined prevailing wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.
  - b. Payroll Records. Each Contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor in connection with the public work. Such records shall be certified and submitted weekly as required by Section 7-1.01A(3), "Labor Code Requirements" of the Standard Specifications and as required by Labor Code Section 1776.
6. Registration of Contractors. Before submitting bids, Contractors shall be licensed in accordance with the provisions of the State Contractors' License Law, Business and Professions Code 7000 et seq. as amended. Contractors shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1725.5 to be qualified to bid on this public project.
  7. Permits and Licenses. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. A City of Monte Sereno Business License will be required before the contract is signed by the City.
  8. Patents. The Contractor shall assume all costs arising from the use of patented materials, equipment, services, or processes used on or incorporated in the Work, and agrees to indemnify and save harmless the City of Monte Sereno, the City Council, and the Engineer, and their duly authorized representatives, for all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, services, or processes.
  9. Contractor's Field Office.
    - a. The Contractor and the Contractor's subcontractors may maintain such office facilities within or near the project area as are necessary for the proper conduct of the Work. The locations for such office facilities shall be as approved by the Engineer. Before or during this contract, should the Contractor desire a new or different location, he

shall apply to the Engineer for the change of locations and shall only make such change with the approval of the Engineer. All office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such facilities will be paid from and included in the Contract Price.

- b. The City and its authorized representatives will at all reasonable times while such office facilities are located at the work site (including, at a minimum, all times during which the Work is performed), have access to any such work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the City and its authorized representatives, neither the Contractor nor its privities will have a reasonable expectation of privacy pursuant to the Fourth Amendment to the United States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such work site facilities will be deemed at all times to be City property subject to inspection and copying by the City and its authorized representatives at all reasonable times while such facilities are located at the work site (including at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the City's rights of access and/or ownership pursuant to this section will constitute a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity.
10. Utilities. The location in public streets of pipes, conduits and other underground facilities of the public utility companies and of the City may not be indicated on the plans. Bidders are instructed to apply to companies and City departments concerned for any information, which may be needed concerning utilities.
11. Contractor Cooperation & Coordination. The Contractor is advised that other construction and maintenance work may be performed by local utility companies, the City and/or their contractors in the project area concurrent with work performed under this contract. The Contractor shall be responsible for contacting the various utility companies to ascertain the times when such other work will occur and schedule the Contractor's work in coordination with others such that no delays shall occur in the Contractor's work schedule or in others who are working in the area. Failure on the Contractor's part to coordinate with others in overlapping work areas shall not be the basis for any claims against the City, additional compensation nor extension of time. In addition, the Contractor shall be solely responsible for any claims made against the City by others as a result of the Contractor's lack of coordination. This shall include businesses and homeowner's adjacent to the project area.
12. Public Convenience. The Contractor shall so conduct the Contractor's operations as to cause the least possible obstruction and inconvenience to public traffic. Where work is being done on existing public roads or streets, and no detours are available, all traffic shall be permitted to pass through the work with as little inconvenience and delay as possible.

Due to the need to accommodate and minimize inconvenience to the public, unless expressly specified or approved in writing by the Engineer, no road closures will be



permitted. Public vehicular and pedestrian traffic must be allowed to travel through the work area with an absolute minimum of interruption or impedance unless otherwise provided for in writing by the Engineer. The Contractor must make provisions for the safe passage of pedestrians around the area of work at all times.

Residents affected by construction must be provided passage and access through the work area to the maximum extent possible. Where existing driveways occur on the street, the Contractor must make provisions for the trench crossings at these points, either by means of backfill or by temporary bridges acceptable to the Engineer, so that the length of shut-down of any driveway is kept to a minimum. In addition, all driveways must be accessible at the beginning and end of each work day, and no driveway or property access may be closed for more than four (4) hours during the work day. Access to driveways, houses, and buildings along the road or street must be as convenient as possible and well maintained, and all temporary crossings must be maintained in good condition. To minimize the need for and complexity of detours, not more than one crossing or street intersection or road may be closed at any one time without the written approval of the Engineer.

Except as otherwise provided by the Engineer, the stockpiling or storing of material in City streets or right of ways shall be prohibited. Where the Contractor has received Engineer approval, all such materials must be piled or stored in a manner that will not obstruct sidewalks, driveways, or pedestrian crossings. Gutters and drainage channels must be kept clear and unobstructed at all times. All such materials shall be stored and handled in a manner that protects City streets, sidewalks, or other facilities from damage.

Throughout performance of the Work, the Contractor must construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for the public and private traffic at all times including Saturdays, Sundays, and holidays.

Water shall be applied as directed the Engineer for the prevention of dust nuisance in connection with public convenience. No additional payment will be made for applying water for the prevention of dust.

The Contractor shall be responsible for keeping all emergency services, including the Monte Sereno police and fire departments informed of obstructions to, or detours around any public or private roads caused by reasons of the Contractor's operations.

The Contractor must comply with the State of California, Department of Transportation Manual of warning signs, lights, and devices for use and performance of work within the job site.

No work shall begin before 8:00 a.m. nor continue after 5:00 p.m. Monday through Friday, nor shall any work be done on weekends or holidays observed by the City of Monte Sereno unless approved in advance by the Engineer.

The fact that rain or other causes, either within or beyond the control of the Contractor, may force suspension or delay of the Work, shall in no way relieve the Contractor of

Contractor's responsibility of maintaining traffic through the Project and providing local access as specified in this section. The Contractor must, at all times, keep on the job such materials, force, and equipment as may be necessary to keep roads, streets and driveways within the Project open to traffic and in good repair and shall expedite the passage of such traffic, using such force and equipment as may be necessary.

Full compensation for furnishing all labor, materials, tools and equipment and doing all the work involved in this item of work as above specified, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be made therefore.

13. Public Safety. The Contractor shall furnish, erect, and maintain such fences, barriers, lights, signs and watchmen as are necessary to give adequate warning to the public at all times that the Work is under construction and of any dangerous conditions to be encountered as a result thereof. At any and all points along the Work where the nature of construction operations in progress and the Contractor's equipment and machinery in use is of such character as to endanger passing traffic, the Contractor shall provide such lights and signs and station such guards as may appear necessary to prevent accidents and avoid damage or injury to passing traffic.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic. At the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Full compensation for furnishing all labor, materials, tools and equipment and doing all the work involved in this item of work as above specified, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be made therefore. Should the Contractor fail to provide public safety as specified, or if, in the opinion of the Engineer, the warning devices furnished by the Contractor are not adequate, the City may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations and the Contractor will be liable to the City for, and the City may deduct from amounts due or that may become due the Contractor under the Contract, all costs incurred including, but not limited to, administrative costs.

Nothing in this section will be construed to impose tort liability on the City or Engineer.

14. Preservation of Property. Roadside trees and shrubbery that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water lines, all street facilities, and any other improvements or facilities within or adjacent to the Work shall be protected from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition as good as when the Contractor entered upon the Work, or as good as required by the

specifications accompanying the contract, if any such objects are a part of the Work being performed under the contract.

The Contractor shall examine all bridges, culverts and other structures on or near the Work, over which he will move the Contractor's materials and equipment, and before using them, the Contractor shall properly strengthen such structures, where necessary. The Contractor will be held responsible for any and all injury or damage to such structures caused by reason of the Contractor's operations.

The fact that any such pipe or other underground facility is not shown upon the plans shall not relieve the Contractor of the Contractor's responsibility under this article. It shall be the Contractors' responsibility to ascertain the existence of any underground improvements or facilities, which may be subject to damage by reason of the Contractor's operations, and if it is necessary to lower such underground facility or encase it to protect it from damage, it shall be done at the Contractor's expense.

15. Responsibility for Damage. The City of Monte Sereno, the City Council, or the Engineer shall not be answerable or accountable in any manner, for any loss or damage that may happen to the Work or any part thereof; or for any of the materials or other things used or employed in performing the Work; or for injury or damage to any person or persons, either workmen or the public; or for damage to adjoining property from any cause whatsoever during the progress of the Work or at any time before final acceptance.

16. Contractor's Indemnities.

a. To the fullest extent permitted by law, the Contractor will take all responsibility for the Work, and will bear all losses and damages directly or indirectly resulting to the Contractor, any subcontractors engaged in performance of the Work, the City, its officials, officers, employees, agents, volunteers and consultants, and to third parties on account of the performance or character of the Work, unforeseen difficulties, accidents, or occurrences of other causes predicated on active or passive negligence of the Contractor or of any subcontractor engaged in performance of the Work. To the fullest extent permitted by law the Contractor will indemnify, defend and hold harmless the City, its officials, officers, employees, agents, volunteers and consultants from and against any or all loss, liability, expense, claims, costs (including costs of defense), suits, and damages of every kind, nature and description (including, but not limited to, penalties resulting from exposure to hazards in violation of the California Labor Code) directly or indirectly arising from the performance of the Work ("Claims").

b. The Contractor will indemnify, defend and hold harmless the City, the City's officials, officers, employees, volunteers, agents and the Engineer and Architect for all liability on account of any patent rights, copyrights, trade names or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction,

processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the City that any such charges have been paid.

- c. The Contractor assumes all liability for any accident or accidents resulting to any person or property as a result of inadequate protective devices for the prevention of accidents in connection with the performance of the Work. The Contractor will indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, volunteers and consultants from such liability.
- d. Approval of the Contractor's certificates of insurance and/or endorsements does not relieve the Contractor of liability under this provision. The Contractor will defend, with legal counsel reasonably acceptable to the City, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorney's fees incurred. The Contractor will promptly pay any judgment rendered against the City, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the City, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the City, its officials, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.
- e. The Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims related to damage to surface or underground facilities caused by the Contractor or any of the Contractor's privities or agents.
- f. The Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims, including any fines or other penalties, related to failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the State of California's National Pollution Discharge Elimination System General Permit, or to implement the project specific Storm Water Pollution Protection Plan (SWPPP) in accordance with the Technical Specifications. The City may withhold from amounts due or that may become due the Contractor under this Contract amounts that equal or are estimated to equal the amount of Claims, including fines, resulting from failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with the Technical Specifications.
- g. In accordance with California Civil Code Section 2782(a), nothing in the Contract will be construed to indemnify the City for its sole negligence, willful misconduct, or for defects in design furnished by City. In accordance with California Civil Code Section 2782(b), nothing in the Contract will be construed to impose on the Contractor or to relieve the City from liability for the City's active negligence. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the

insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.

17. Contractor's Responsibility for Work. Except as provided above, until the formal acceptance of the Work by the City, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any of the above caused before its completion and acceptance and shall bear the expense thereof, except for such injuries or damages as are directly and proximately caused by acts of the Federal Government or the public enemy.

In case of suspension of work from any cause whatever, the Contractor shall be responsible for the work as above specified and he shall also be responsible for all materials delivered to the Work including materials for which he has received partial payment.

18. Portion of the Work, Which May be Placed in Service. If desired by the City of Monte Sereno, the Work, as completed, may be placed in service. The Contractor shall give proper access to the Work for this purpose but such use and operations shall not constitute an acceptance of the Work, and the Contractor shall remain liable for defects due to faulty construction, material and/or workmanship.
19. No Personal Liability. Neither the Engineer nor the City Council, nor any other officer or authorized assistant or agent shall be personally responsible for any liability arising under the contract.
20. No Abrogation of Codes, Standards, Laws and Ordinances. The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the General Provisions or plans is to be construed to permit

Work not conforming to these codes:

- National Electrical Safety Code, U. S. Department of Commerce
- National Board of Fire Underwriters' Regulations
- California Building Standards Code as adopted by the City
- Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- Industrial Accident Commission's Safety Orders, State of California
- Regulations of the State Fire Marshall (Title 19, California Code of Regulations) and Applicable Local Fire Safety Codes
- Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.

21. Guaranty. Unless specified otherwise, the Contractor guarantees all of the Work for one year from the date the City accepts the Work. Upon receiving written notice of a need for repairs

which are directly attributable to defective materials or workmanship the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the City. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the Contract or at law or equity, the City may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor, and/or call on the Contractor's maintenance bond for the cost of making good such defects and for the City's reasonable legal costs, if any, of recovering against the bond. The Contractor will remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the City.

Contractor shall file with City a corporate surety bond in the sum of ten percent (10%) of the final contract price (including all change orders for extra work securing this guaranty to City, and said bond shall be filed at the time final acceptance of this Work is requested or deposit ten percent (10%) of the contract price with the City as a cash bond for said one (1) year period. Should Contractor within a reasonable time after demand made fail to make any and all such repairs or replacements, City may undertake said repairs and replacements with its own forces or through contract, and Contractor shall reimburse City for any and all costs of said repairs or replacements, even if said cost exceed the principal sum of the corporate surety bond which is security for the performance of this guaranty. Contractor and the Contractor's surety may provide the foregoing guaranty in the original performance bond.

22. General Safety Requirements.

- a. In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the City nor its officials, officers, employees, agents, volunteers or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities engaged in the performance of the Work. The Contractor agrees that neither the City, the Architect, nor the Engineer will be responsible for having hazards corrected and/or removed at the work site. The Contractor agrees that the City will not be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees with respect to the Work and the Work site, the Contractor will be responsible for not creating hazards and for having hazards corrected and/or removed, for taking appropriate, feasible steps to protect the Contractor's employees from such hazards and that the Contractor

has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers.

- b. Review and inspection by the City, the Engineer, the Architect or Engineer, and/or other representatives of the City of the Contractor's performance of the Work will not constitute review of the adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the work site is maintained and the Work is performed in a safe manner.
  - c. The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the work site is maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.
  - d. The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 and following of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.
23. Fair Employment Provision. The Contractor will not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry or national origin. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the awarding authority setting forth the provisions of this fair employment practices section.
24. Employment of Apprentices. Attention is directed to the provisions in Sections 1777.5 (Chapter 1411, Statutes of 1968) and 1777.8 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under the Contractor.

Section 1777.5, as amended, required the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the

contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five (1:5) except:

- a. When unemployment in the area of coverage by the joint apprenticeship committee has exceeded an average of fifteen percent (15%) in the ninety (90) days prior to the request for certificate, or
- b. When the number of apprentices in training in the area exceeds a ratio of one to five (1:5), or
- c. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or
- d. When the Contractor provided evidence that he employs registered apprentices on all of the Contractor's contracts on an annual average of not less than one apprentice to eight journeymen.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other Contractors on the public works site are making such contributions.

The Contractor and any subcontractor under the Contractor shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.



**SECTION VIII**  
**PROSECUTION AND PROGRESS**

1. Subcontracting. No subcontractor will be recognized as such, and all persons engaged in the Work or construction will be considered as employees of the Contractor and he will be held responsible for their work, which shall be subject to the provisions of the contract and specifications. The Contractor shall give the Contractor's personal attention to the fulfillment of the contract and shall keep the Work under the Contractor's control.

The Contractor shall be responsible for the Contractor's own and subcontractors' compliance with Section 1777.5 of the Labor Code regarding apprenticeable occupations as in said section provided. Any Contractor willfully failing to comply with this section shall be denied the right to bid on a public works contract for a period of six (6) months from the date the determination is made.

Where a portion of the Work, which has been subcontracted by the Contractor, has not been prosecuted in a manner satisfactory to the Engineer, the subcontractor shall be removed immediately on the requisition of the Engineer and shall not again be employed on the Work.

2. Assignment. The performance of the contract may not be assigned except upon the written consent of the City. Consent will not be given to any proposed assignment, which would relieve the original, Contractor or the Contractor's surety of their responsibilities under the contract nor will the City consent to any assignment of a part of the Work under the contract.
3. Time of Completion and Statement of Working Days. The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in the Special Provisions.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer.

The Engineer will furnish the Contractor a monthly statement showing the number of working days charged to the contract for the preceding month, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the contract and the number of working days remaining to complete the contract and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Section VIII-6, "Temporary Suspension of Work" of these General Provisions.

The Contractor will be allowed 15 days from the issuance of the monthly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct.

4. Progress of the Work and Time of Completion. The Contractor shall begin work upon receipt of the Notice to Proceed. However, the Contractor shall begin work no earlier than the twenty-first (21st) day after the commencement of the advertisement of the call for bids.
5. Character of Workers. If any subcontractor or person employed by the Contractor shall fail or refuse to carry out the direction of the Engineer or shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, he shall be discharged immediately on the requisition of the Engineer, and such person shall not again be employed on the Work.
6. Temporary Suspension of Work. The Engineer shall have the authority to suspend the Work wholly or in part, for such period as he may seem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable prosecution of the Work, or for such time as he may seem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the contract. The Contractor shall immediately comply with the written order of the Engineer to suspend work wholly or in part. The Work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.
7. No Contractor Damages for Avoidable Delays. All delays in the Work that might have been avoided by the exercise of care, prudence, foresight and diligence of the Contractor or any privities of the Contractor will be deemed avoidable delays. Delays in the Work that may be unavoidable but that do not necessarily affect other portions of the Work or prevent completion of all work within the Time for Completion, including, but not limited to, reasonable delays in Engineer approval of shop drawings, placement of construction survey stakes, measurements and inspection, and such interruption as may occur in prosecution of the Work due to reasonable interference of other contractors of the City, will be deemed avoidable delays. The Contractor will not be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for avoidable delays.
8. Impact of Unavoidable Delays. All delays in the Work that result from causes beyond the control of the Contractor and that the Contractor could not have avoided through exercise of care, prudence, foresight, and diligence will be deemed unavoidable delays. Orders issued by the City changing the amount of Work to be done, the quantity of materials to be furnished, or the manner in which the Work is to be prosecuted, and unforeseen delays in the prosecution of the Work due to causes beyond the Contractor's control, such as strikes, lockouts, labor disturbances, fires, epidemics, earthquakes, acts of God, neglect by utility owners or other contractors that are not privities of the Contractor will be deemed unavoidable delays to the extent they actually delay the Contractor's completion of the Work. The Contractor will be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for unavoidable delays to the extent such delays actually delay the Contractor's completion of the Work and/or result in the Contractor incurring additional costs in excess of the Contract Price.

Delay due to normal, adverse weather conditions will not be deemed unavoidable. The Contractor should understand that normal adverse weather conditions are to be expected

and plan the Work accordingly, such as by incorporating into the Project Schedule normal, adverse weather delays as reflected in historical data of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce for the weather station most applicable to the Work site.

9. No Contractor Damages for Contractor Caused Delay. Contractor will not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents.
  
10. No Contractor Damages for Delay Not Caused By the City, Delay Contemplated by the Parties, or other Reasonable Delay. Contractor will not be entitled to damages for delay to the Work caused by the following, which the City and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances:

Exercise of the City's right to sequence the Work in a manner that would avoid disruption to the City and other contractors based on: the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the City or any other governmental agency of competent jurisdiction of any government act or regulation, or enforcement by the City of any provisions of the Contract.

Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the City or its representatives in a reasonable time in accordance with the Contract Documents.

11. Delays Caused by the City and/or Its Privities. Delay caused by the City and/or other contractors of the City will be deemed unavoidable delays. Either the City or the Contractor may propose a change in the Time for Completion and/or the Project Schedule for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City and the Contractor. Such proposed changes in the Time for Completion will constitute a change order proposal. The City and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing and/or changes in the Time for Completion and/or the Project Schedule are in anticipation of impacts that may, but have not yet occurred, the City will be obligated to pay the Contractor for such anticipated impacts or to award a change in the Time for Completion and/or the Project Schedule in accordance with the Contract and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated impacts. Notwithstanding

anything to the contrary, the City and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the City and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

12. Delay Claims. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.
13. Contractor Coordination of the Work. The City reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor must at all times conduct the Work so as to impose no hardship on the City, others engaged in the Work or other contractors working at the work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the work site.

If any part of the Work depends on proper execution or results upon the Work of the City or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the City any apparent discrepancies or defects in such other work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the City's or other contractor's work as fit and proper.

The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade will be part of the Work except where stated otherwise.

The Contractor will provide proper facilities at all times for access of the City, the Engineer, Architect, and other authorized City representatives to conveniently examine and inspect the Work.

14. Liquidated Damages.

The Contractor shall complete the work called for under the contract in all parts and requirements within the number of working days specified.

It is agreed by the parties of the contract that in case all the work called for under the contract is not completed before or upon the expiration of the time limit as set forth in the Agreement for Public Improvements, damage will be sustained by the City, and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City the sum prescribed in the Special Provisions per working day for each and every working day's delay beyond the time prescribed to complete the Work; and the Contractor

agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due the Contractor under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the time specified, the City shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if the City decided to extend the time for completion of the contract, it shall further have the right to charge to the Contractor, the Contractor's heirs, assigns, or sureties, and to deduct from the final payment for the Work, all or any part as it may seem proper, of the actual cost of engineering, inspection, superintendence and other overhead expenses which are directly chargeable to the contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate shall not be included in such charges.

The Contractor shall not be assessed with liquidated damages nor the cost of Engineering and inspection during any delay in the completion of the Work caused by acts of God or of the public enemy, acts of the City, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided, that the Contractor shall within ten (10) days from the beginning of any such delay notify the Engineer in writing of the causes of delay, who shall ascertain the facts and the extent of delay, and the Engineer's finding of facts thereon shall be final and conclusive.

If the Contractor is delayed by any act of the Engineer or of the City, not contemplated by the contract, the time of completion shall be extended proportionately and the Contractor shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. The Contractor shall have no claim for any other compensation for any such delay.

15. Suspension of Contract. If at any time in the opinion of the Engineer, the Contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the Work with the diligence and force specified and intended in and by the terms of the contract, notice thereof in writing will be served upon the Contractor, and should he neglect or refuse to provide means for a satisfactory compliance with the contract, as directed by the Engineer, within the time specified in such notice, the City in any such case shall have the power to suspend the operation of the contract. Upon receiving notice of such suspension, the Contractor shall discontinue said work, or such parts of it as the Engineer may designate. Upon such suspension, the Contractor's control shall terminate and thereupon the City or its duly authorized representative may take possession of all or any part of the Contractor's materials, tools, equipment, and appliances upon the premises, and use the same for the purpose of completing said contract, and hire such force and buy or rent such additional machinery, tools, appliances, and equipment, and buy such additional materials and supplies at the Contractor's expense as may be necessary for the proper conduct of the Work and for the completion thereof, or may employ other parties to carry the contract to completion, employ the necessary workmen,

substitute other machinery or materials, and purchase the materials contracted for, in such manner as the Engineer may seem proper; or the City may annul and cancel the contract and re-let the Work or any part thereof.

Any excess of cost arising therefrom over and above the contract price will be charged against the Contractor and the Contractor's sureties who will be liable therefore. In the event of such suspension, all money due the Contractor or retained under the terms of this contract shall be forfeited to the City; but such forfeiture will not release the Contractor or the Contractor's sureties from liability or failure to fulfill the contract. The Contractor and the Contractor's sureties will be credited with the amount of money so forfeited toward any excess of cost over and above the contract price, arising from the suspension of the operations of the contract and the completion of the Work by the City as above provided, and the Contractor will be so credited with any surplus remaining after all just claims for such completion have been paid.

In the determination of the question whether there has been any such noncompliance with the contract as to warrant the suspension or annulment thereof, the decision of the Engineer shall be binding on all parties to the contract.

16. Communications.

- a. All notices, demands, requests, instructions, approvals, proposals, and claims must be in writing.
- b. Any notice to or demand upon the Contractor shall be sufficiently given if delivered at the office of the Contractor stated on the signature page of the Proposal (or at such other office as the Contractor may from time to time designate in writing to the City), or if deposited in the United States mail in a sealed envelope, or delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.
- c. All correspondence to the City, related to this contract, including request for payment, shall be addressed to the Engineer, City of Monte Sereno, 18041 Saratoga-Los Gatos Road, Monte Sereno, California 95030, and any notice to or demand upon the City shall be sufficiently given if so delivered or if deposited in the United States mail in a sealed envelope, or to other such representatives of the City to such other address as the Agency may subsequently specify in writing to the Contractor for such purpose.

Any such notice shall be deemed to have been given as of the time of actual delivery of (in the case of mailing) when the same should have been received per receipt, or in the case of telegrams, at the time of actual receipt, as the case may be.

17. Audit and Examination of Records. The City may examine and audit at no additional cost to the City all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor,

subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or Contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the work site, and at any other location where such Project related data may be kept until three years after final payment under the Contract. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be expended is in excess of \$10,000, this Contract will be subject to the examination and audit of the State Auditor, at the request of the City, or as part of any audit of the City, for a period of three (3) years after final payment under the Contract.

18. Project Schedule. Within ten (10) working days after the Notice of Award, the Contractor must deliver to the Engineer a bar chart and critical path method (CPM) schedule detailing the Contractor's intended schedule of work for the entire Project. The schedules must be detailed to clearly show the relative sequence of the items of work, their inter-relationships, start and completion dates, float, the critical path, and any other item deemed necessary by the Engineer. The schedule must allow for the completion of the entire Work within the time for completion and also conform to the City's milestone deadlines.
  - a. City Review of Schedule. The City may review the Contractor's submitted schedule and may note any exceptions. The Contractor must correct any exceptions noted by the City within five (5) working days of being notified of the exceptions.
  - b. Update of Schedule. After submission of a schedule to which the City has taken no exceptions, the Contractor must submit an updated schedule on a monthly basis or as otherwise specified by the City until completion of the Work. The updated schedule must show the progress of work as of the date specified in the updated schedule and its relation to milestone dates.
  - c. Float. The schedule must show early and late completion dates for each task. The number of days between these dates will be designated as "Float". The Float will be designated to the Project and will be available to both the City and the Contractor as needed to complete the Work in accordance with the Contract.
  - d. Failure to Submit Schedule. If the Contractor fails to submit schedules within the time periods specified in this section, or submits a schedule to which the City has taken uncorrected exceptions, the City may withhold payments to the Contractor until such schedules are submitted and/or corrected in accordance with the Contract Documents.
  - e. Responsibility for Schedule. The Contractor will be solely and exclusively responsible for creating the schedule and properly updating it. The City may note exceptions to any schedule submitted by the Contractor. However, the Contractor

will be solely responsible for determining the proper method for addressing such exceptions and the City's review of the schedule will not create scheduling obligations of the City.



**SECTION IX**  
**MEASUREMENT AND PAYMENT**

1. Measurement of Quantities. All work to be paid for at a contract price per unit of measurement will be measured by the Engineer in accordance with Section 9-1.01, "Measurement of Quantities" of the Standard Specifications. When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigh station and deliver said slip to the Engineer at the point of delivery of the material. All loads in vehicles hauled over streets and highways shall be legal loads and no payment will be made for the loads in excess of the legal load limits.  
Quantities of material wasted or disposed of in a manner not called for under the contract, or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the contract, or material not unloaded from the transporting vehicle, or material placed outside of the lines indicated on the plans or established by the Engineer, or material remaining on hand after completion of the work; will not be paid for and such quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.

2. Progress Payments. The City once in each month shall cause an estimate in writing to be made by the Engineer of the total amount of work done and the acceptable materials furnished and delivered by the Contractor on the ground and not used, to the time of such estimate, and the value thereof. The City shall retain five percent (5%) of such estimated value of the work done and fifty percent (50%) of the value of the materials so estimated to have been furnished and delivered and unused as aforesaid as part security for the fulfillment of the contract by the Contractor and shall pay monthly to the Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the work is not processing in accordance with the provisions of the contract, or when in the Engineer's judgment the total value of the work done since the last estimate amounts to less than three hundred dollars (\$300). No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

For any monies earned by the Contractor and withheld by the City to ensure the performance of the contract, the Contractor may, at Contractor's request and expense, substitute securities equivalent to the amount withheld in the form and manner and subject to the conditions provided in Chapter 13 (commencing with Section 4590), Division 5, Title 1 of the Government Code of the State of California.

3. Scope of Payment. The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, labor, tools, and equipment necessary for the completion of the contract; also for loss or damage arising from the nature of the Work, or from the action of the elements, except as hereinbefore provided, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the final acceptance by the City and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in the consequence of the suspension or

discontinuance of the Work as herein specified; and for completing the work according to the plans and specifications. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

4. Stop Notice Retention. The City may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 9350 et seq. of the Civil Code.
5. Progress Payment Deductions. The Contractor hereby agrees and acknowledges that progress payments are subject to deduction for failure to comply with certain Contract requirements which include but are not limited to traffic control, cleanliness/daily clean-up, "buttoning-up," open trenches, environmental compliance, maintaining services, etc. In the event such non-compliance occurs, the City may cure these deficiencies with its own crews or with other contractors/vendors. The full cost the City incurs to cure these deficiencies will be deducted from the next progress payment. "Full costs" include all labor, materials, and equipment plus applicable "mark-ups," including overhead, should the City perform the work with its own forces. Should the City elect to have the work performed by a contractor/vendor, the "full cost" will include the invoiced amount plus a 20 % mark-up to cover handling expenses for the City.
6. Acceptance of the Work. When the final inspection is completed and it has been determined that the Work is done in accordance with the plans and specifications, the Engineer will accept the Work and 95% of the payment based on the final quantities will be paid to the contractor, the balance will be paid 30 days after the Notice of Completion has been filed with the County and upon furnishing of the specified guaranty bond to the City.
7. Final Payment. Within thirty five (35) days after the completion of the Work and its acceptance by the City, the Engineer will make a proposed final estimate in writing of the quantities of work done under the contract and the value of such work and will submit such estimate to the Contractor. Within thirty five (35) days thereafter the Contractor shall submit to the Engineer the Contractor's written approval of said proposed final quantities or a written statement of all claims, which he has for additional compensation claimed to be due under the contract.

On the Contractor's approval or if he files no claims within said period of thirty five (35) days, the Engineer will issue a final written estimate as submitted to the Contractor and the City shall pay the entire sum so found to be due after deducting therefrom all previous payments and all amounts to be kept and all amounts to be due after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the contract.

If the Contractor within said period of thirty five (35) days files claims, the Engineer will issue as a semi-final estimate the proposed estimate submitted to the Contractor and the City will within thirty five (35) days pay the sum found due thereon after deducting all prior payments and all amounts to be kept and retained under the provisions of the contract.

The Engineer shall then consider and investigate the Contractor's claims and shall make such revision in the said estimate as he may find to be due, and shall then make and issue the Engineer's final written estimate. The City will pay the amount so found due, after deducting all previous payments and amounts to be retained under the contract.

All prior partial estimate and payments shall be subject to correction in the final estimate and payment. The final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the performance of the contract and the amount of work done thereunder and compensation therefore, except in the case of gross error.

Payment on the semi-final estimate will be due within thirty (30) days from the date the same is issued by the Engineer. Payment on the final estimate is due within thirty (30) days from the date the same is issued.

8. Travel and Subsistence Payment. Travel and subsistence payments shall be made to each worker needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreement filed in accordance with Section 1773.8.
9. Notice of Potential Claim. The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the Engineer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless the Contractor shall have given the Engineer due written notice of potential claim as hereinafter specified.

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice as above required must have been given to the Engineer prior to the time that the Contractor shall have performed the Work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. City may request additional information from Contractor regarding the Contractor's claim, which shall be provided, to City within 10 days of the request.

It is the intention of this section that differences between the parties arising under and by virtue of the contract are brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that they shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

10. Claims.
  - a. General. A "Claim" means a written demand or written assertion by Contractor to adjust, alter, modify, or otherwise change the Contract price or the Contract time,

or both. All claims filed hereunder shall strictly comply with all requirements of the Contract Documents. All claims by Contractor against City shall be submitted in writing to City, and shall be governed by Public Contract Code Sections 9204 and 20104 – 20104.6, after which time the one year time period in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days.

In order to qualify as a Claim, the written demand must state that it is a claim submitted according to the terms of the Contract Documents. A letter, voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim under the Contract Documents. If such a request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.

A Claim must be stated with specificity, including identification of the event or occurrence giving rise to the Claim, the date of the event, and the asserted affect on the Contract price and the Contract time, if any. The Claim shall include adequate supporting data. Adequate supporting data for a Claim for an adjustment of the Contract time shall include scheduling data demonstrating the impact of the event on the controlling operation and completion of the Project. Adequate supporting data for a Claim for an adjustment in the Contract price shall include a detailed cost breakdown of items included within the Claim and documentation supporting each item of cost.

Notwithstanding and pending the resolution of any Claim, the Contractor shall diligently prosecute the disputed work to final completion of the Work. Contractor shall impose the Claim notice and documentation requirements in this Contract on Contractor's subcontractors of all tiers, and require them to submit to the Contractor all Claims against Contractor and/or the City within the times and containing the documentation required by these provisions. The Claim notice and documentation procedures described in these provisions applies to all claims and disputes arising under the Contract Documents, whether or not specifically referred to in any specific portion of the Contract.

If additional information or details are required by the Engineer to determine the basis and amount of any Claims, the Contractor shall furnish additional information or details so that the additional information or details are received by the Engineer no later than the fifteenth calendar day after receipt of the written request form the Engineer. If the fifteenth day falls on a Saturday, Sunday, or legal holiday, then receipt of the information or details by the Engineer shall not be later than close of business of the next business day. Contractor understands and agrees that failure to submit the information and details to the Engineer within the time specified shall result in Contractor waiving that Claim.

The Contractor and all subcontractors shall keep full and complete records of the costs and additional time incurred for any work for which a Claim for additional compensation is made. The Engineer or any designated claim investigator or auditor shall have access to those records and any other records as may be required by the Engineer or designated claim investigator to determine the facts or contentions involved in the claim(s). Contractor agrees that failure to permit access to those records waives Contractor's Claims.

The City of Monte Sereno, or its authorized representatives, shall have access, upon reasonable notice, during normal business hours, to Contractor's and subcontractors' books, documents and accounting records, including, but not limited to, bid worksheets, bids, subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, canceled checks, profit and loss statements, balance sheets, project correspondence including but not limited to all correspondence between Contractor and its sureties and subcontractors/vendors, project files, scheduling information, and other records of the Contractor and all subcontractors directly or indirectly pertinent to the work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any change order, prospective or completed, or any claim for which additional compensation has been requested or claim has been tendered. Such access shall include the right to examine and audit such records, and make excerpts, transcriptions and photocopies of the City's cost.

b. Disputes.

- (1) Contract Interpretation Disputes. Should it appear to the Contractor that the work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, the Contractor shall give written notice to the City. The Contractor shall bear all costs incurred in giving such notice.

All issues regarding the interpretation of the plans or specifications shall be referred to the City for interpretation. The City shall have the right but not the obligation to affirm or disaffirm any interpretation of the plans or specifications, which affirmance or disaffirmance shall be final. If the Contractor should disagree with the City's decision, the Contractor's sole and exclusive remedy is to file a Claim in accordance with these provisions.

- (2) Work Disputes. Should any disputes arise under the Contract Documents respecting the true value of any work performed, the implementation of the Work required by the Contract Documents, any Work omitted, any extra work which the Contractor may be required to perform or time extensions, respecting the size of any payment to the Contractor during the performance of the Contract Documents, or of compliance with Contract Document procedures, the dispute shall be decided by the City and its decisions shall

be final and conclusive. If the Contractor disagrees with the City's decision, the Contractor's sole and exclusive remedy is to file a claim in accordance with these provisions.

- (3) Delays. As used herein, the following terms shall have the following meanings:

“Excusable Delay” means any delay of the completion of the Project beyond the expiration of the Contract time caused by conditions beyond the control and without the fault or negligence of the Contractor such as strikes, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions in which the Work cannot continue. The financial inability of the Contractor or any subcontractor and default of any subcontractor, without limitation, shall not be deemed conditions beyond the Contractor's control. An Excusable Delay may entitle the Contractor to an adjustment in the Contract time.

“Compensable Delay” means any delay of the completion of the Work beyond the expiration date of the Contract time caused by the gross negligence or willful acts of the City, and which delay is unreasonable under the circumstances involved, and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Contract time and/or Contract price. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

“Inexcusable Delay” means any delay of the completion of the Project beyond the expiration of the Contract time resulting from causes other than those listed above. An Inexcusable Delay shall not entitle the Contractor to an extension of the Contract time or an adjustment of the Contract price.

The Contractor may make a claim for an extension of the Contract time, for an Excusable Delay or a Compensable Delay, subject to the following:

- (i) If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last.
- (ii) If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract time shall be the number of days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Inexcusable Delay.
- (iii) If an Inexcusable Delay occurs concurrently with both an Excusable

Delay and a Compensable Delay, the maximum extension in the Contract time shall be the number of days, if any, by which the number of days determined pursuant to Subparagraph (ii) exceeds the number of days of the Inexcusable delay.

- (iv) For a Compensable Delay, the Contractor shall only be entitled to an adjustment in the Contract price in an amount equal to the actual additional labor costs, material costs, and unavoidable equipment costs incurred by the Contractor as a result of the Compensable Delay, plus the actual additional wages or salaries and fringe benefits and payroll taxes of supervisory and administrative personnel necessary and directly employed at the Project site for the supervision of the Work during the period of Compensable Delay. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. There shall be no Compensable Delay unless the event or occurrence giving rise to the Compensable Delay extends the actual completion of the Project past the Contract time.

The parties agree that the City's exercise of its right to order changes in the Work, regardless of the extent and number of changes, or to suspend the work, is within the contemplation of the parties and shall not be the basis for any Claim or Compensable Delay.

- c. Claim Procedures. Should any clarification, determination, action or inaction by the City, or any event, in the opinion of the Contractor, exceed the requirements of or not comply with the Contract Documents, or otherwise result in the Contractor seeking additional compensation in time or money for any reason, (collectively "Disputed Work"), then the Contractor and the City shall make good faith attempts to resolve informally any and all such issues and/or disputes. The Contractor must file a written Notice of Potential Claim with the City before commencing the Disputed Work, or within seven (7) calendar days after Contractor's first knowledge of the Disputed Work, whichever is earlier, stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of the Contract Documents. If a written Notice of Potential Claim is not filed within this period, or if the Contractor proceeds with the Disputed Work without first having filed the notice required by these provisions, the Contractor shall waive any rights to further claim on the specific issue.

The City will review the Contractor's timely notice of potential claim and provide a decision. The City may require supplemental information from the Contractor to clarify that contained in the Notice of Potential Claim. If, after receiving the City's decision, the Contractor disagrees with the decision, the Contractor shall so notify the City, in writing, within seven (7) calendar days after receiving the decision, that a formal Claim will be filed. The Contractor shall submit the Claim in the form specified herein and all arguments, justification, costs or estimates, schedule

analyses, and detailed documentation supporting the Contractor's position within thirty (30) calendar days after receiving the City's decision on the notice of potential claim. The Contractor's failure to furnish notification within seven (7) calendar days and all justifying documentation within thirty (30) calendar days will result in the Contractor waiving all rights to the subject Claim.

If Disputed Work persists longer than thirty (30) calendar days after receiving the City's decision on the Notice of Potential Claim, then the Contractor shall, every thirty (30) calendar days until the Disputed Work ceases, submit to the City a document titled "Claim Update" which shall update and quantify all elements of the Claim as completely as possible. The Contractor's failure to submit a Claim Update or to quantify all costs and impacts every thirty (30) days shall result in a waiver of that portion of the Claim for thirty (30) calendar day period. Claims or Claim Updates stating that damages will be determined at a later date shall not comply with the requirements of these provisions and shall result in the Contractor waiving such Claim(s) and/or Claim Updates.

All claims must be submitted to Engineer before the issuance of the final estimate. Contractor hereby expressly waives all Claims not submitted, in complete and proper form, on or before the date of issuance of the final estimate.

Upon receipt of the Contractor's formal Claim including all arguments, justification, costs or estimates, schedule analyses, and documentation supporting the Contractor's position as previously stipulated, the City or its designate will review the Claim and render a final determination according to the processing and review procedures listed in Section IX-12, "Claims Processing and Review" of these General Provisions.

No costs arising out of or in connection with the performance of Claims of any nature, other than those specifically listed herein may be recovered by the Contractor. Except where provided by law, or elsewhere in these Contract Documents (if applicable), the City shall not be liable for special or consequential damages, and Claims shall not include special or consequential damages.

- d. Claim Format. The Contractor shall submit the Claim justification in the following format:
- (1) Cover letter and certification of the accuracy of the contents of the Claim;
  - (2) Summary of Claim including underlying facts, entitlement, quantum calculations, and Contract Document provision supporting relief;
  - (3) List of documents relating to the Claim, including plans, specifications, clarifications/requests for information, schedules and others;
  - (4) Chronology of events and correspondence;



- (5) Analysis of Claim merit;
  - (6) Analysis of Claim costs;
  - (7) Attached supporting documents referenced in item (3) above.
- e. **Exclusive Remedy.** The Contractor's performance of its duties and obligations specified in these provisions and submission of a Claim as provided in these provisions is the Contractor's sole and exclusive remedy for the payment of money, extension of time, adjustment or interpretation of Contract Documents' terms, or other contractual or tort relief arising from the Contract Documents. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout the Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or the Contract Documents, negligence or strict liability by the City, its representatives, consultants or agents, or the transfer of the Work or the Project to the City for any reason whatsoever. The Contractor waives all claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with the Claim submission requirements. Compliance with the notice and Claim submission procedures described in these provisions is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. No Claim or issues not raised in a timely protest and timely Claim submitted under these provisions may be asserted in any Government Code Claim, subsequent litigation, or legal action. The City shall not have deemed to waive any provision under this section, if at the City's sole discretion, a Claim is accepted in a manner not in accord with this section.

11. **False Claims Affidavit.** California Penal Code Section 72 provides that any person who presents for payment with intent to defraud any City, any false or fraudulent claim, bill, account, voucher, or writing, is punishable by fines not exceeding ten thousand dollars (\$10,000) and/or imprisonment in the state prison.

Government Code Sections 12650 et seq. (California False Claims Act), pertains to civil penalties that may be recovered from persons (including corporations, etc.) for presenting a false claim for payment or approval, presents a false record or statement to get a false claim paid or approved, or other acts, to any official or employee of any political subdivision of the State of California. Any person or corporation violating the provisions of Government Code Section 12650 et seq., shall be liable for three times the amount of the damages of the political subdivision, plus a civil penalty, plus costs. Contractor agrees that any costs or expenses incurred by the City in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records, or the Contract, shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

All Claims by Contractor, shall include the following certification, properly completed and executed by Contractor or an officer of Contractor:

I, \_\_\_\_\_, BEING THE \_\_\_\_\_ (MUST BE AN OFFICER) OF \_\_\_\_\_ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ., PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

*SIGNATURE LINES WILL BE ADDED HERE*

12. Claims Processing and Review.

Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 20104, et seq., specifies required provisions on resolving contract claims less than \$375,000. Those statutes constitute a part of this Contract. In the event any other Contract provision violates such statutes, the applicable statute controls.

Public Contract Code Section 9204 provides:

- (a) For the purposes of this section, "Claim" means a separate demand by Contractor for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by City.
- (b) Procedure:
  - (1) Upon receipt of a Claim the City shall conduct a reasonable review of the Claim and within 45 days, or if City's governing body must approve City's response to the Claim and the governing body has not met within the 45 days then within three (3) days of the governing body's meeting, shall provide Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. Should City take no action on the Claim within 45 days of submission, it shall be deemed denied.
  - (2) If the Contractor disputes City's response to its Claim, including a failure to respond, it may submit via registered mail or certified mail, return receipt requested, a written demand for an informal conference to meet and confer for settlement of the issues in dispute.

City shall schedule such a meet and confer conference within 30 days for settlement of the dispute. Within ten (10) days of the meet and confer conference City shall provide Contractor with a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. If the Contractor disputes City's statement it shall inform City and they shall mutually agree to a mediator within 10 business days of the written statement.

- (3) City shall pay the undisputed portions of the Claim within 60 days of the issuance of a written statement identifying an undisputed portion.
- (4) Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the claimant sharing the associated costs equally. The City and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.
- (5) For claims under \$375,000, unless the parties agree otherwise in writing, mediation pursuant to these provisions shall excuse the mediation obligation under Public Contracting Code section 20104.4(a).
- (6) The parties may mutually agree, in writing, to waive the mediation requirements of this subsection and proceed to the commencement of a civil action.
- (7) Failure by the City to respond to a Claim from a Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A Claim that is denied by reason of the public entity's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the claimant.
- (8) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
- (9) If a Subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against City because privity of contract does not exist, the Contractor may present to the City a claim on behalf of a Subcontractor or lower tier subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the Subcontractor or by a lower tier

subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the City and, if the original Contractor did not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

- (10) Nothing in this section shall impose liability upon an City that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.
- (11) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

To the extent applicable, Public Contract Code Section 20104, et seq., provide:

- (c) For the purposes of this section, “Claim” means a separate demand by Contractor of \$375,000 or less for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by City. Separate Contractor Claims that together total more than \$375,000 do not qualify as a “separate demand of \$375,000 or less,” as referenced above, and are not subject to this section.
- (d) Caution. This section does not apply to tort claims, and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the Government Code.
- (e) Procedure:
  - (1) The Claim must be in writing, submitted in compliance with all requirements of General Conditions including, without limitation, the time prescribed by and including the documents necessary to substantiate the Claim. Nothing in this section is intended to extend the time limit or supersede notice requirements for the filing of claims as set forth in the General Conditions or elsewhere in the Contract Documents.
  - (2) For Claims of fifty thousand dollars (\$50,000) or less, City shall respond in writing within forty-five (45) days of receipt of the Claim, or City may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims City may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section upon mutual agreement of City and Claimant. City’s written response to the

Claim, as further documented, shall be submitted to Claimant within fifteen (15) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

- (3) For Claims over Fifty Thousand Dollars (\$50,000) and less than or equal to \$375,000: City shall respond in writing within sixty (60) days of receipt of the Claim, or City may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims City may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section, upon mutual agreement of City and Claimant; City's written response to the Claim, as further documented, shall be submitted to Claimant within thirty (30) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.
- (4) Meet and Confer: If Claimant disputes City's written response, or City fails to respond within the time prescribed above, Claimant shall notify City, in writing, either within fifteen (15) days of receipt of City's response or within fifteen (15) days of City's failure to timely respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand City will schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- (5) Following the meet and confer conference, if the Claim or any portion remains in dispute, Claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time Claimant submits its written claim as set forth herein, until the time that Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

13. Extra Work. New and unforeseen items of work will be classed as extra work when they cannot be covered by any of the various items for which there is a bid price or by combinations of such items.

The Contractor shall do such extra work and furnish such materials and equipment therefore, as may be required in writing by the Engineer, but he shall not do extra work except upon written order from the Engineer, and in the absence of such written order he shall not be entitled to payment for such extra work. All bills for extra work done shall be filed in writing with the Engineer. For such extra work the Contractor shall receive compensation at the prices previously agreed upon in writing, or upon a failure to agree

upon prices, he shall be paid on force account, as provided in Section IX-14, "Force Account Work" of these General Provisions.

All extra work shall be adjusted daily upon report sheets furnished to the Engineer by the Contractor and signed by both parties which daily reports shall thereafter be considered the true record of extra work done.

14. Force Account Work. Where payment is to be made on a force account basis, the Contractor shall receive the actual cost of all material, labor and rented equipment furnished by the Contractor as shown by paid vouchers, plus fifteen percent (15%); provided, however, that the City reserves the right to furnish such materials required as it seems expedient, and the Contractor shall have no claim for profit on the cost of such materials.

For use of equipment owned by the Contractor he shall be paid the current prices prevailing in the locality, which shall have been previously determined and agreed upon in writing by the Contractor, plus fifteen percent (15%).

When work is performed by force account, in addition to the actual cost of labor, the City will reimburse the Contractor for compensation insurance payments; contributions made to the State as required by the provisions of the Unemployment Reserve Act, Chapter 352, Statutes of 1935, as amended; and for taxes paid to the Federal Government as required by the Social Securities Act approved August 14, 1935, as amended. The payment of fifteen percent (15%) in addition to the actual cost of all material, labor, and rented equipment, as herein provided, shall include full allowance to the Contractor for overhead and profit on the force account work and full compensation to the Contractor for premiums paid on any other insurance of any nature which the Contractor may be required to carry or which he may elect to carry; and for additional premiums paid on faithful performance and payment bonds required by reason of the increases in the amount of work to be performed over and above that called for in the original contract.

All force account work shall be adjusted daily upon report sheets, furnished to the Engineer by the Contractor and signed by both parties, which daily reports shall thereafter be considered the true record of force account work done.

If force account work is done on the contract the Contractor shall furnish to the Engineer three (3) copies of a certificate from the insurance company showing the compensation insurance rates to be charged on the various classes of work to assist in verification of the Contractor's charges for extra work and force account.

[END OF GENERAL PROVISIONS]

## SPECIAL PROVISIONS

### 1. Time of Completion and Liquidated Damages

The Contractor shall diligently prosecute the work to completion before the expiration of **FORTY FIVE (45) calendar days** from the first chargeable day as set forth in the “Notice to Proceed.”

The Contractor shall pay to the City of Monte Sereno the sum of **One Thousand Dollars (\$1000) for each calendar day** for each day’s delay in finishing the work in excess of the number of days specified as the period for performance of the Agreement.

Attention is directed to Section VIII, “Prosecution and Progress,” of the General Provisions and to Section 8-1.07, “Liquidated Damages,” of the Standard Specifications.

### 2. Working Hours

Except as specified in the Technical Specifications or as otherwise approved in writing by the Engineer, regular working hours are 8:00 a.m. to 5:00 p.m., and regular working days are from Monday to Friday (the street traffic may be restricted to a single lane operation with flaggers after 8:30 a.m.).

### 3. Community Outreach and Notification

The Contractor shall notify the following City Departments Forty-Eight (48) hours prior to the start of work on this project:

CITY OF MONTE SERENO PUBLIC WORKS DEPARTMENT  
Notify Public Works Inspector ..... (408) 354-7635

LOS GATOS / MONTE SERENO POLICE DEPARTMENT  
Notify Traffic Division ..... (408)-354-8600

SANTA CLARA COUNTY FIRE DEPARTMENT  
Notify Dispatcher’s Office ..... (408) 378-4010

The Contractor shall be responsible for furnishing the necessary labor, materials, tools and equipment required to perform the following notifications:

- A. Contractor shall distribute written notices to all affected residents at least three working days before starting construction and every three weeks thereafter describing the planned work, future scheduling, impact mitigation measures, and a 24-hour reachable telephone number so as to minimize any inconvenience. Contractor to provide site maps showing limit of work.

A representative of the contractor shall attend public outreach meetings as required to provide clarification as to problems encountered, upcoming work plans, temporary access arrangements, detours and schedules.

- B. At least 48 hours and not more than 96 hours prior to commencement of work, the Contractor shall post the following notices for the work:
1. On-site barricade mounted signs.
  2. Where parking is to be restricted and upon approval by the Engineer, “No Parking – Tow Away” signs on barricades at intervals of 40-feet between driveways. The signs shall indicate the days and times for the “No Parking” restriction. Notice shall also be given to the Police and Fire Departments prior to restricting traffic on any street. Work must commence within 24 hrs of the posted date otherwise contractor must notify the city and all the residents accordingly.
  3. The Contractor shall notify the Engineer and Police Communications upon completion of posting for each work area.

Work shall not commence unless these required notices are adhered to.

The Contractor shall coordinate work with waste hauler and post office to minimize conflicts with normal services.

#### **4. Measurement & Payment**

Unless otherwise noted, measurement and payment for the contract work shall be in accordance with Section IX, “Measurement and Payment” of the General Provisions. Full compensation for conforming to the requirements of the various sections within these Special Provisions, shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed.

#### **5. Traffic Controls**

The Contractor shall submit and obtain City approval for traffic control and detour plans prior to the commencement of operations on a street. Traffic control and detour plans shall be based on the most recent Caltrans Manual of Traffic Control for Construction and Maintenance Work Zones, and comply with the most recent California Manual on Uniform Traffic Control Devices (MUTCD).

Contractor shall comply with the following Standard Specifications:

- Section 7-1.03 Public Convenience
- Section 7-1.04 Public Safety
- Section 12 Temporary Traffic Control



The Contractor shall maintain one lane of traffic open in each direction at all times as directed by the Engineer. Lane closures are limited to the timeframes listed in the Technical Provisions. **The Contractor is responsible for maintaining emergency access to driveways at all times.** Any driveway closure shall include proper notification of the property owner and/or tenant.

All signs used by the Contractor shall conform to the standards of the “Manual on Uniform Traffic Control Devices”, issued by the Department of Transportation, State of California, current edition. All warning, regulatory and construction signs shall have high intensity reflectorized tape sheeting.

Personal vehicles of the Contractor’s employees shall not be parked within the construction zone. Side street parking is allowed. The Contractor shall cooperate with local authorities relative to handling traffic through the area and shall make Contractor’s own arrangements relative to keeping the working area clear of parked vehicles. The Contractor shall furnish flaggers, place and maintain all necessary detour/directional signs and barricades around the construction area so as to provide protection to both vehicular and pedestrian traffic. All barricades furnished and placed by the Contractor shall be adequately illuminated at all times.

In addition to the foregoing traffic control and safety measures, the Contractor shall undertake immediately to implement any measures requested by the City Engineer, as defined necessary to ensure the proper flow of traffic and the protection of the public and the safety of the workers. The Contractor shall maintain at all times the ability to respond to calls from the Los Gatos Monte Sereno Police Department during non-working hours to replace or provide additional traffic control or safety devices as shall be required by the Police Department.

**6. Contractor’s Use of Premises / Project Appearance**

Overnight storage of materials or parking of Contractor vehicles on public streets will not be allowed. All spillage or tracking of materials on public streets, driveways and sidewalks shall be cleaned-up immediately.

Demolition material or debris shall be hauled off-site immediately. If temporary stockpiling is necessary, the stockpile site location and BMP’s to be implemented shall be approved by the Engineer, and the material shall be disposed of daily.

Particular attention will be paid to site housekeeping on Friday afternoons. All construction zones must be totally secured by 4:00 p.m. on Friday afternoons.

Contractor shall not use private water and must acquire a water meter from the water company before connecting to any public water system.

- **Business License.** The Contractor shall obtain a City of Monte Sereno Business License prior to the City issuing the Notice to Proceed.

7. **Utilities**

**Contractor's Responsibility.** The Contractor shall verify the location of all underground utility services before proceeding with the excavation work, requesting in advance the services of inspectors from the utility companies in order to ascertain said locations. Attention is directed to specific potholing locations shown on the plan. It is critical that these potential utility conflicts be ascertained prior to beginning work directly or indirectly related to these locations.

Damage to underground utilities resulting from neglect on the part of the Contractor shall be corrected and paid for by the Contractor.

**Notification.** The Contractor shall notify all owners of public utilities forty-eight (48) hours in advance of excavating around any of their substructures and shall also provide the same notice to Underground Service Alert of California, telephone number (800) 227-2600. Upon request, the City Engineer will furnish the Contractor a list of the various offices and numbers to call.

8. **Dust & Air Pollution Control**

The Contractor shall furnish all water, labor and equipment necessary to control dust within the immediate project area and upon any roads used for hauling which become dusty as result of the Contractor's operations.

Precautions shall be taken to control dust and to comply with the requirements of the Bay Area Air Quality Management District. When problems arise either as a result of complaints or as determined by the City, construction operations under this contract may be suspended until the Contractor has satisfactorily complied with dust control measures. The Contractor shall assume all liabilities arising as a result of inadequate dust control measures.

The Contractor shall comply with all air pollution control rules, regulations, ordinances, and statutes that apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances, and statutes, specified in Section 11017 of the California Government Code.

9. **Noise Mitigation**

The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances that apply to any work performed pursuant to the Contract. Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer.

Unless exceptions are approved in writing by the Engineer, Contractor's operations shall generally not exceed 90 dBA on weekdays during authorized working hours.

Said noise level requirements shall apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor.

**10. Non-Stormwater Discharges**

Storm water/urban runoff discharges to the public storm drainage system shall be prohibited for all discharges not wholly comprised or storm water, or permitted by a valid National Pollution Discharge Elimination System (NPDES) permit issued by the California Regional Water Quality Control Board. “Storm drain system” includes all roads with drainage systems, municipal streets, catch basins, curbs, gutter, ditches, man-made channels, or storm drains. The Contractor shall prevent all non-storm water discharges from the construction site (i.e., mixing and cleaning materials, concrete washout, disposal of paints, adhesives, solvents and landscape products).

**11. Project Record Documents**

The Contractor shall maintain a set of project specifications and a full-size set of plans marked “Record Documents” upon which shall be legibly marked information detailing the actual materials used, location of newly constructed facilities, and the location and arrangement of existing facilities as actually encountered in the field. Contractor shall prepare record documents as the Work progresses.

For Specifications and Addenda, Contractor shall legibly mark each Section to record the manufacturer, trade name, catalog number and supplier of each product and item of equipment actually installed.

Change Order directives shall also be recorded as such.

**12. Schedule & Staging Plan**

The Contractor shall submit a daily schedule of work to be done to the city inspector. Contractor is also responsible for submitting and staging the construction of the project as to minimize the disturbance to existing site conditions and everyday public activities.

## **TECHNICAL PROVISIONS**

### **SECTION 10-1 GENERAL CONSTRUCTION REQUIREMENTS**

#### **Project Plans**

The attached schedules with listed streets and corresponding maintenance treatments, and “Project Details” found in the attachments.

#### **Investigating of Site Conditions**

- A. It is the responsibility of each Bidder before submitting a Bid:
1. To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents;
  2. To visit the site to become familiar with local conditions that may affect cost, progress, or performance of the Work;
  3. To consider federal, state and local laws and regulations that may affect the cost, progress, or performance of the Work;
  4. To study and carefully correlate the Bidder’s observations with the Contract Documents;
  5. To notify the Engineer of all conflicts, errors, ambiguities, or discrepancies in or between the Contract Documents and such other related data; and
  6. The Contractor shall assume all responsibility for deductions and conclusions as to the difficulties in performing the work.
  7. The Plans show conditions as they are supposed, or believed by the City to exist. The City does not warrant the completeness or accuracy of such information. It is the Contractor’s responsibility to ascertain the existence of all conditions affecting the cost of work.

#### **Mobilization**

Mobilization shall not be separately paid for but shall be considered as included in the payments for other items of work. This shall include full compensation for furnishing all labor and materials, including tools, equipment and incidentals, and for performing all of the work involved in placing, removing, storing, maintaining, moving to new locations, replacing and disposing of equipment and materials as specified in the City Standard Specifications, the Standard Specifications, and these Technical Provisions, and as directed by the Engineer.

## **Order of Work**

At least five (5) working days before any work is started, the Contractor shall furnish to the Engineer a written schedule for the work, listing the dates on which individual areas are to be subject to project related work and the extent of impact caused by the work. Additionally, the Contractor shall submit any request for approval for special traffic consideration including but not limited to lane closures, etc. The Contractor shall thenceforth adhere diligently to said written schedule in the prosecution of the work.

The street may not be available for work if scheduling is not requested by the Contractor and approved by the Engineer (5) working days prior to the desired workday.

Attention is directed to Section 10-2, "Traffic Control Requirements," of these Technical Provisions.

## **Work within the City of Monte Sereno Jurisdiction**

Work on La Rinconada Drive between Natalye Road and Clara Street falls within the jurisdiction of the Town of Los Gatos (Town). For the work within the Los Gatos limits, the Contractor shall obtain an encroachment or street opening permit from the Town. The permit shall be issued at no fee to the Contractor.

Same indemnification requirements in this Contract shall apply to the Town for the work within the Town jurisdiction. The Town and its elected and appointed officers, employees, and volunteers shall be held harmless from all claims, suits or actions of every name, kind, and description brought for or on account of injuries to or death of any person or damage to property arising out of or resulting from negligent acts, errors or omissions, or willful misconduct in connection with any work or performance, or lack thereof, under this Agreement and to the fullest extent permitted by law.

The Town shall be named as additional insureds on the Commercial General Liability policy for the work within the Los Gatos jurisdiction along La Rinconada Drive. The certificate of insurance will be required to obtain an encroachment permit from the Town for the work.

## **Cooperation**

The Contractor shall cooperate and coordinate with the other City's contractors while working on the **2021 Annual Pavement Improvement Project** (Residential Street Pavement, overlay, curb and gutter) project at various streets in the City of Monte Sereno. The City will provide the contractor information for coordination of work. It is the Contractor's responsibility to work with utility companies to coordinate the removal, relocation, raising to grade, installation of the new facilities, or any other utility work as shown and indicated in the specifications with the appropriate utility company. The Contractor shall provide advance notification and shall allow sufficient time and work space for the utility company to complete the work necessary. If in the opinion of the Engineer, the Contractor's operations are delayed by reason of utility facilities not being removed or relocated, the Contractor will be entitled to an extension of time only. The Contractor shall be

entitled to no other compensation for such delay.

### **Progress Schedule**

The Contractor shall submit a project progress schedule for approval by the Engineer within eight (8) days from the date of the Notice of the Award of Contract or 3 days before the pre-construction conference, whichever comes first. Failure to submit an acceptable progress schedule shall result in rejection of the Contractor's proposal. The progress schedule shall be in the form specified below unless otherwise specified in the Special Provision or approved by the Engineer. Updated progress schedules shall be provided by the Engineer monthly with the estimates of work required in Section 9-1.06, "Partial Payments," of the Standard Specifications. No partial payments will be made for any work until an updated schedule has been submitted and approved by the Engineer. Updated schedules shall incorporate all current schedule information, including actual progress, approved time adjustments, and proposed changes in sequence and logic.

The Contractor must furnish a computerized schedule prepared by the critical path method (CPM) which shows the order in which the Contractor proposes to carry out the work; the sequence and interdependence of construction activities; all salient features of the work (including procurement of materials and equipment); the dates on which the Contractor will start the salient features of the work; and the scheduled dates for completing the said salient features. The construction schedule shall include:

- a. Time for submittals and reviews;
- b. Time for fabrication and delivery of manufactured products for the work; and
- c. The interdependence of procurement and construction activities.

The construction schedule shall:

- a. Be a timescaled network diagram referenced to specific calendar dates;
- b. Include time for the Engineer to review submittals or inspect the work; and
- c. Identify the activities which constitute the controlling operations or critical path.

The construction schedule shall not contain multiple critical paths.

Scheduling of change order work is the responsibility of the Contractor. The Contractor shall revise the schedule to incorporate all activities involved in completing the change order work, and submit a new schedule to the Engineer for review.

Delays or changes to non-critical activities will not be considered for a contract time extension. Non-critical activities are those activities which when delayed, do not affect the contract completion time.

The project schedules submitted shall be consistent in all respects with the time and order of work requirements of the contract. The Engineer, at his or her sole discretion, retains the right to reject any and all construction schedules submitted by the Contractor, including when the Engineer

determines that the Contractor has too many items on the Critical Path, or the logic of the schedule is in error, or if the Engineer determines salient items of work are missing from the schedule.

Subject to the above provisions, nothing herein shall preclude the Contractor from early completion of the contract.

The Contractor shall submit updated progress schedules to the Engineer as a condition of approval for the monthly progress payments and final acceptance.

### **Record Drawings**

The Contractor shall keep and maintain on the job site, one record set of drawings. On these, the Contractor shall mark all project conditions, locations, configurations, and any other changes or deviations which may vary from the details represented on the original contract documents, including buried or concealed construction and utility features which are revealed during the course of construction. Final payment will not be approved until the Contractor prepared record drawings have been delivered to the Engineer.

### **General Measurement and Payment Requirements**

The Contractor shall submit in all field quantities completed to date for payment with each monthly pay estimate. The Contractor shall provide, in writing, who from their team will be responsible for field measuring quantities with the Town's representative. Upon completion of a contract bid item, the Contractor's representative shall field measure the final quantities with the City's representative. This agreed upon amount will be considered final and no re-measuring of these field quantities will be allowed without the approval of the Engineer. All supporting documentation required for payment of an item, shall be submitted by the Contractor within two pay periods following the work. Documentation submitted more than two pay periods after the work was completed will not be paid and the cost of this work shall be borne by the Contractor.

### **Hours of Work**

Unless otherwise approved in writing by the Engineer or specified in these Technical Provisions, the hours of work for this project are Monday through Friday, 8:00 am to 5:00 pm. Slurry, curb and gutter, and asphalt overlay must end at a time that allows the streets to be open and available for traffic by the end of the working hours. The Engineer may direct when this operation ends in order to meet this condition.

The work hours will be strictly enforced. The Engineer has full authority to implement the working hours and completely shut down the construction operations outside the hours of work specified. Should the provisions of this section not be met, liquidated damages of Five Hundred Dollars (\$500.00) for every 60 minute time period (or portion thereof) beyond the hours of work allowable shall be withheld from moneys due to the Contractor.

### **24-Hour Contact Number**

The Contractor shall assign a project superintendent who has the complete authority to make decisions on behalf of the Contractor. The project superintendent shall be on the job at all times during construction and shall be available and on call 24 hours a day for the duration of the project. The Contractor shall provide to the Engineer and to the Los Gatos-Monte Sereno Police

Department a 24-hour contact number for the project superintendent. This number shall not direct calls to a recorder or other message taking service.

**Advance Public Notification**

Two weeks prior to beginning any work in an area, the Contractor shall deliver written notice to all adjoining /affected residents, businesses, tenants and all other properties where their only ingress/egress is through the project’s work area. Individual or separate notices shall be given for general construction activity in an area as well as specific activities (slurry, asphalt overlay, and curb and gutter) as required, which will, in any way, inconvenience the resident/property owner/tenant or affect their operations or access to their properties. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration of the activity, and the name, address, and contact number of the Contractor’s superintendent and the City of Monte Sereno Public Works Department. The Contractor shall provide accurate information regarding the construction schedule and activities to be incorporated into the two-week notification. The Contractor shall make every effort to coordinate work with individual residents and businesses whose access will be disrupted in order to minimize the disruption and impacts on the resident or business.

The Contractor shall also provide and hand-deliver a “follow-up” notice. The follow-up notice shall be distributed two working days prior to any scheduled work. The “follow-up” notice shall be delivered to all adjoining residents and businesses, tenants, and any other properties whose sole ingress/egress is through the project’s work area.

Copies of all notices shall be provided to the Engineer for approval five (5) working days prior to the desired distribution date.

Should the Contractor’s schedule change and/or differ in any capacity from the schedule initially mentioned in the notification to the resident/property owner/tenant or from the updates to the City website, the Contractor shall re-notify all applicable parties (residents/property owner/tenant and/or businesses mentioned below) five (5) working days prior to the beginning of any work on that street.

The Contractor shall contact and coordinate the work with the following parties throughout the project. The two week and two day notification shall also be given to the following parties prior to beginning any work:

- Santa Clara Valley Transportation Authority – Kermit Cuff – (408) 321-7062
- West Valley Collection and Recycling, LLC. – (408) 283-9250
- U.S. Postal Service – Post Master – (408) 354-5466
- Los Gatos/Monte Sereno Police Department – (408) 354-8600
- Santa Clara County Fire Department – (408) 378-4010

The Contractor shall also give written notice to residents/businesses for any driveway closures or anticipated service disruptions. The Contractor shall coordinate all disruptions with the appropriate utility, property owner, resident, business and the City. Notice shall be given in advance and specify the duration of the disruption of any utility, and the temporary closure of access to any



driveway. Such notice will comply with the requirements for closure of driveway access as specified under Special Provision Section 10-2, "Traffic Control Requirements."

Lack of proper advance notification and coordination shall result in the work being shut down. All costs associated with the stoppage of work shall be borne by the Contractor.

### **Meetings**

Prior to commencement of any work on the project, a pre-construction conference will be scheduled by the City and held at the City's Engineering Department for the purpose of review and discussion of the project schedule and construction procedures. The Contractor's project manager and/or project superintendent and representatives from all listed subcontractors shall be required to attend the pre-construction conference. The Contractor shall prepare and submit at the pre-construction meeting the proposed project schedule, water pollution control plan, traffic control plan, public notification letter, and other submittals.

The Contractor shall also schedule and conduct weekly field meetings at locations to be determined by the City. The meetings shall be held at the same time and place each week and shall include all subcontractors working on the project and discussions of scheduled work on the project during the week of the meeting. The Contractor shall notify the Engineer of the time, date, and location of these meetings 72 hours in advance of the first meeting. Detailed schedules for the following two weeks shall be submitted to the Engineer at each weekly meeting.

### **Waste Haulers and Recycling Operations**

The Contractor shall not impair or impede waste hauler and recycling operations scheduled to be conducted within the project area. It is the Contractor's responsibility to determine which waste hauler and recycling operators are scheduled to operate within the project area, and to develop a project schedule that will not impair or impede the waste hauler or recycling operations.

### **Project Appearance and Street Sweeping**

The Contractor shall maintain a neat appearance to the work site. Debris developed during construction shall be disposed concurrently with its generation. Stockpiling of debris or construction materials shall not be allowed unless otherwise approved by the Engineer.

The City prohibits the use of any public property or public right-of-way locations as construction staging points, unless specifically approved by the Engineer.

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

The Contractor shall operate within public right-of-way only.

### **Tree Trimming and/or Removal**

If existing trees or shrubs, including median island planting, and private trees, encroach into the public right-of-way and threaten to obstruct the Contractor's operation, the Contractor shall request permission to trim existing trees or shrubs, at least five (5) working days prior to the date of scheduled tree trimming. All tree and shrub trimming must have prior approval of the Engineer and shall be performed by a Contractor possessing a C-27 or a D-49 license. All costs for tree or shrub trimming and proper disposal shall be paid by the Contractor.

A special notice pertaining to the tree trimming shall be delivered to the adjacent home or business at least two working days before the tree is trimmed. The notice shall be reviewed and approved by the Engineer before deliver.

Trees identified on the plans to be removed shall be removed and disposed of by the Contractor. If additional trees need to be removed, Contractor shall have prior approval of the Engineer before removing trees. Work shall be performed by a Contractor possessing a C-27 or a D-49 license.

### **Staging/Disposal Areas**

The Contractor shall survey the area for construction staging. Staging areas shall not be located in a residential area.

The following requirements shall apply to the contractor's staging area:

- No stockpiles or staging area will be allowed in the right-of-way or on undeveloped lots unless specifically approved by the Engineer
- The staging area will be included in the Contractor's SWPPP
- The staging area will not be located in an environmentally or culturally sensitive area and/or impact water resources (rivers, streams, bays, inlets, lakes, drainage sloughs).
- The staging area will not be located in a regulatory floodway or within the base floodplain (100-year).
- The staging area will not affect access to properties or roadways.

The Contractor shall obtain the approval of the Engineer before staging equipment or storing materials in the public right-of-way or on City property. In addition, the Contractor shall provide proof of an agreement when using private property for staging, if requested by the Engineer.

All debris shall be hauled off and disposed of the same working day in which the material was generated.

Personal vehicles of the Contractor's employees shall not be parked in the neighborhood or on the traveled way. When entering or leaving roadways carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic and shall travel in the normal direction of travel.

### **Dust Control**

The following requirements shall be applicable to this contract in lieu of the requirements of Section 10-5, "Dust Control," of the Standard Specifications.

- A. The Contractor shall provide an acceptable plan for preventing the generation of dust due to the Contractor's operations in the construction zones, along the haul routes, or equipment parking areas. This plan may consist of water sprinkling sweepers or an equivalent service. No separate

payment will be made for dust control and all costs in connection therewith shall be included in the payment items to which the work is incidental.

- B. In the event the control of dust is not satisfactory to the Owner, the Owner shall take such measures as may be necessary to insure satisfactory dust control and deduct the cost of such measures from any payments due to the Contractor.

### **Water for Construction**

The costs of water as required for the construction and post-construction on this project, including dust control, shall be considered as included in the costs of items bid for applicable item of work and no separate payment will be made therefor. The Contractor shall conform to the requirements of the water company from which water is purchased. In no case shall the Contractor violate the City's water conservation ordinance.

### **Sanitation**

The Contractor shall provide for sanitary facilities for the use of the workers on the job. Such facilities shall be placed and maintained by the Contractor so as not to be aesthetically displeasing, annoying to the neighbors, nor offensive to the senses nor the community standards of decency. The Engineer shall be the sole judge of the adequacy of the facility, the placement, and the maintenance thereof. Upon notification by the Engineer of deficiencies in any of these areas, the Contractor shall make immediate corrections. Failure to take corrective action within 24 hours shall give the Engineer due cause to stop the work in the contract and to order the corrective work to be done on the sanitary facility and to charge all costs of such work against the monies due or to become due to the Contractor.

### **Water Pollution Control**

Water pollution control work shall conform to the provisions in Section 13, "Water Pollution Control," of the Standard Specifications and these Technical Provisions.

The Contractor shall be responsible for ensuring that all work conforms to the "Best Management Practices for the Construction Industry" found in the Storm Water Pollution Prevention Plan (SWPPP), the "Blueprint for a Clean Bay" handout, and the City Code.

The Contractor shall comply with the requirements of the State Water Resource Control Board (SWRCB) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharge Associated with Construction and Land Disturbance Activities.

The Contractor shall not violate any discharge prohibition contained in the California Regional Water Quality Control Board San Francisco Bay Basin Water Quality Control Plan ("Basin Plan").

A storm water information handout, "Blueprint for a Clean Bay," has been prepared for this contract and is attached.

### **Measurement and Payment**

The contract lump sum price paid for Water Pollution Control shall include full

compensation for furnishing all labor, material, equipment, tools, and incidentals necessary to prepare and implement a water pollution control plan as described above, as shown on the plans, as specified in this section and as directed by the Engineer and shall be included and paid for in the appropriate bid item price for Water Pollution Control. Tree removal shall be paid by each tree removal and shall include full compensation for furnishing all labor, material, equipment, tools, and incidentals necessary to remove trees and dispose of material as described above, as shown on the plans, as specified in this section and as directed by the Engineer and shall be included and paid for in the appropriate bid item price for Tree Removal.

**WATER POLLUTION CONTROL (L.S.)**

**BID ITEM #1**

**REMOVE TREE (EA)**

**BID ITEM #9**

**REMOVE EXISTING VEGETATION (L.S.)**

**BID ITEM #10**

### **Electric Blowers**

The use of leaf blowers is allowed and shall not exceed 65 decibels in all residential, commercial, and industrial zones or public space, measured 50 feet from the source.

### **Measurement and Payment**

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work involved in compliance with the Plans, Specifications and Technical Provisions of Section 10-1, "General Construction Requirements," including full compensation for additive alternate work, shall be deemed included in the price paid for other contract items and no additional compensation shall be allowed therefore.

## **SECTION 10-2 TRAFFIC CONTROL REQUIREMENTS**

### **General**

Traffic control shall conform to the provisions of Section 12 "Temporary Traffic Control" of the Standard Specifications, the California Manual on Uniform Traffic Control Devices (MUTCD) and these Technical Provisions. Nothing in these Technical Provisions shall be construed as relieving the Contractor from the responsibilities specified in Section 7-1.04, "Public Safety," of the Standard Specifications and of these Technical Provisions.

The Contractor shall maintain a safe workplace throughout the job including, but not limited to, providing all flaggers, safety equipment, flashing arrow boards, changeable message signs (minimum of two), traffic control devices; maintenance of barricades, safe pedestrian passages along sidewalks, maintenance of handicap access throughout the project site where applicable and maintenance of pavement within the limits of the roadway and driveways with a suitable traffic bearing surface.

The Contractor shall provide and maintain all necessary traffic control devices to ensure safe pedestrian and vehicular access through and around the job site. Warning signs shall be installed at locations in accordance with the CA MUTCD– Part 6: Temporary Traffic Control dated 2014, latest revision. The Contractor shall fulfill the requirements of this section, 24 hours per day, seven days a week, including holidays, from the time the Notice to Proceed is issued until the project is formally accepted.

Should the Contractor fail to perform these duties, the Engineer, at the Engineer's sole discretion, may elect to have City, or contract forces, perform the duties, deducting the expenses incurred from any moneys that are due, or to become due, to the Contractor. By exercising this option, the Contractor is in no way relieved of the responsibility to perform these duties.

The Contractor shall provide a minimum of two competent and qualified flaggers dedicated solely to directing traffic if traffic lanes have been reduced to only one lane for two way traffic, in and out of driveways and cross-streets and/or across the construction area as deemed to ensure safe traffic control during construction operations. Flaggers shall be equipped with all necessary tools to properly control the traffic.

#### **Traffic Control/Management Plan**

A traffic control plan shall be submitted by the Contractor to the Engineer a minimum of five (5) working days prior to any work commencing on the project. The traffic control plan shall be reviewed and accepted by the Engineer prior to any work commencing on the project. All traffic plans shall be prepared in accordance with the latest version of the State of California Department of Transportation 2014 California Manual on Uniform Traffic Control Devices– Part 6: Temporary Traffic Control, Section 12-3, “Temporary Traffic Control Devices,” of the Standard Specifications and these Technical Provisions.

#### **No Parking Signs**

Prior to the start of work which requires parking restriction, the Contractor shall request approval to post and maintain temporary “No Parking” signs on each street where the operations will take place. It shall be the Contractor's responsibility to post "No Parking" signs in the areas where the Contractor's work will require restricted parking. To be enforceable, the signs must be posted not less than 72 hours prior to the start of the work at a maximum spacing of 60 feet. The signs must clearly show the date(s) and hours of the parking prohibition, as well as the date and time the signs were posted and the project name and contractor’s phone number. If the work is not performed during the timeframe indicated on the “No Parking” signs, the work will be rescheduled with at least five (5) working days advance notice. The Contractor shall perform all re-posting of “No Parking” signs and re-notification of businesses, tenants, and residents as a result of his failure to meet the posted schedule. Any delays caused by failure of the Contractor to adhere to the approved schedule will be at the Contractor’s sole expense. No additional compensation will be allowed for costs resulting from said delays.

The Contractor shall remove the “No Parking” signs immediately when they are no longer needed for use in the respective area of the project. The Contractor shall notify the Los Gatos/Monte

Sereno Police Department directly after posting, and immediately upon removal of the said signs at (408) 354-8600.

During the morning of each scheduled work day, the Contractor shall be responsible for calling the Los Gatos/Monte Sereno Police Department Police Dispatch to tow cars, if necessary. The Contractor shall have available for the police responding to the call photo documentation of the "No Parking" signs being posted – if the signs were removed or vandalized the previous night.

### **Detours, Temporary Striping, and Barriers**

Any approved detours or barriers, signing and striping necessary to complete the construction of the project shall be provided, installed, maintained, and removed by the Contractor at his expense. Temporary striping shall be self-sticking traffic marking tape, vinyl or otherwise, developed for such use, and shall be used for temporary striping as required, unless shown otherwise on the plans or specified in the technical provisions. No painted temporary striping or markings will be allowed unless the temporary markings will be entirely covered by the permanent markings.

Notify the Los Gatos/Monte Sereno Police Department daily at (408) 354-8600 of street or lane closures or detours within the roadway prior to setting up and upon removal of traffic control devices.

### **Additional Construction Area Signs and Controls**

In addition to the requirements of the Manual of Traffic Controls for Maintenance and Construction Work Zones, the following traffic controls will be required as specified by the Engineer. These additional requirements in no way relieve the Contractor from his obligation to comply with the standards set forth in that manual.

- "Road Work Ahead" (Type C23) signs shall be posted in advance of the first major cross street before the start of the work zone to allow traffic to avoid the work zone prior to entering the zone. The signs shall also be posted at the approaches to the project site.
- "End Road Work" (Type G20-2) signs shall be placed at all public road exits from the project site.
- The Contractor shall provide, install and maintain a minimum of four (4) lighted barricades for each individual construction site for concrete improvements (i.e. for curb and gutter removal & replacement and for accessibility ramp installation).
- Changeable message board signs will be used starting one (1) week prior to construction beginning and will be maintained in place until construction impacts to the public no longer exist as determined by the Engineer.

The Contractor shall be responsible for locating existing poles on which to mount these signs, or shall provide temporary stands or poles on which to place the required signs. The Engineer shall approve the method of attachment to existing poles prior to sign installation. No sign shall be mounted on decorative street light poles unless the Contractor can clearly show that the mounting method will not damage the finish on the poles.

Upon completion of the work, the signs and posts shall be removed and disposed of outside the public right of way in conformance with the provisions in Section 7-1.04, "Public Safety" of the Standard Specifications.

### **Maintenance of Pedestrian Access and Circulation**

Safe pedestrian access and circulation that is fully wheelchair accessible shall be maintained by the Contractor through or around the project area. All walkways, pedestrian crossings, ramps and other pedestrian facilities removed or blocked by the Contractor's operations shall be replaced with temporary facilities unless otherwise approved by the Engineer.

Pedestrian access at each individual project site may be diverted for a maximum of five (5) calendar days with approved traffic control plan. Drop off from existing improvements to excavated areas shall be temporarily ramped. Ramps shall be maintained at 12:1 or flatter with compacted sub-grade or base rock material until final improvements are installed.

### **Lane Closures**

Requests for lane closures shall be made a minimum of five working days prior to the proposed closure. Once the lane closure has been approved by the City, the Contractor shall post a minimum of five (5) working days in advance of the proposed lane closure a changeable message board signs at the limits of each closure or as specified by the Engineer. These changeable message board signs shall also be used on the day of the actual closure. The changeable message board signs shall indicate the days and hours of the proposed lane closure and the type of work being done during that lane closure.

Flashing arrow signs shall be used for all lane closures. The Contractor shall check with the Engineer to confirm any lane closure restrictions that may be in effect before closing any lanes.

The Contractor shall leave the streets open to traffic until just prior to starting the work, and will provide all barricades, signs and traffic control measures necessary to protect the work.

Work shall be completed on Monday through Friday per the Caltrans 5-day construction workday calendar. No work that interferes with public traffic shall be performed prior to 8:00 am or after 5:00 pm, except as otherwise approved by the Engineer. All traffic lanes shall be open to traffic between the hours of 5:00 pm and 8:00 am unless otherwise authorized by the Engineer. All streets shall be open to traffic at the end of the workings hours specified in this section.

A minimum of one paved, or surfaced traffic lanes and one paved bicycle lane, not less than fifteen (15) feet wide (10 foot wide for the traveled vehicle lane and 5 feet wide for the bicycle lane), shall be open for use by public traffic at all time. Traffic may not be routed over unpaved roadways unless authorized by the Engineer.

In addition, the full width of the traveled way on each street shall be open for public use on Saturdays and Sundays (except for those streets approved by the Engineer for weekend work), on designated legal holidays, and when construction operations are not actively in progress.

Deviations from the requirements of this section concerning hours of work, which do not change the cost of the work, may be permitted upon the written request of the Contractor, if in the opinion of the Engineer, the general public will be better served and the work expedited. Such deviations shall not be implemented until the Engineer has provided the Contractor with written approval to do so. All other modifications will be made by contract change order.

The Contractor shall pay the City liquidated damages in the amount of \$500 per hour (or part of an hour) for traffic control that is set-up before the designated and approved hours of work. Liquidated damages for failure to open streets by the required time shall be \$500.00 per hour.

### **Traffic Control System for Lane Closure**

A traffic control system shall consist of closing traffic lanes in accordance with the details shown on Caltrans Standard Plans T10, T10A, T11, T11A, T12, and T13, the provisions of Section 12, “Temporary Traffic Control,” of the Standard Specifications, CA MUTCD– Part 6: Temporary Traffic Control, and under these Technical Provisions.

The provisions in this section will not relieve the Contractor from the responsibility to provide additional devices or take measures as may be necessary to comply with the provisions of Section 7-1.04, “Public Safety,” of the Standard Specifications.

Each vehicle used to place, maintain and remove components of a traffic control system on multilane roads shall be equipped with a Type II flashing arrow sign which shall be in operation when the vehicle is being used for placing, maintaining, or removing the components. Vehicles equipped with a Type II flashing arrow sign not involved in placing, maintaining, or removing the components when operated within a stationary type lane closure shall only display the caution display mode. The sign shall be controllable by the operator of the vehicle while the vehicle is in motion.

If any component of the traffic control system is displaced, or ceases to operate or function as specified from any cause, during the progress of the work, the Contractor shall immediately repair the component to its original condition or replace the component, and shall restore the component to its original location.

When lane closures are made for work periods only, at the end of each work period, all components of the traffic control system, except portable delineators placed along open trenches or excavations adjacent to the traveled way, shall be removed from the traveled way and shoulder. If the Contractor so elects, the components may be stored at selected central locations, approved by the Engineer.

### **Property Access Requirements**

The Contractor shall maintain property access to all residents and businesses at all times unless otherwise approved by the Engineer. Upon approval by the Engineer, access to certain properties may be temporarily closed if all of the following conditions can be met:

- a. No options exist to maintain property access and complete the project.



- b. The Contractor has discussed the closure with the resident or business owner in person.
- c. Residents or business owners has been notified, in writing, at least eight (8) calendar days in advance of the time and length of closure
- d. Resident or business owners have been reminded of the closure, in writing, at least two (2) working days prior to the actual closure.
- e. The Contractor has provided the resident or business with a contractor name and number to call with questions regarding the closure.

### **Construction Operations in the Vicinity of Signalized Intersections**

Unless otherwise approved by the Engineer, construction operations in or at the vicinity of any signalized intersection that affect traffic movement may require the presence of two (2) off-duty Los Gatos-Monte Sereno police officers per intersection to monitor and direct traffic while work is in progress. Unless otherwise agreed upon by the Los Gatos-Monte Sereno Police Department, the Contractor shall plan their work such that they are able to provide at least two (2) weeks advance notice to the Los Gatos-Monte Sereno Police Department when scheduling officers. The Contractor shall schedule officers with the Town Police Department at (408) 354-8600. The minimum chargeable rate for a reserve officer is \$46.00 per hour and a three (3) hour minimum shift is required. In lieu of using a Los Gatos-Monte Sereno police officer, the Contractor may use a licensed traffic control company as approved by the Engineer.

The Contractor shall be invoiced directly from the Los Gatos-Monte Sereno Police Department and shall pay for all costs associated with their service.

All existing movements available must be maintained through the intersection.

### **Measurement and Payment**

Full compensation for preparing traffic control plans, temporary pavement delineation plans, providing construction and detour signs, and for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work involved in compliance with the Plans, Specifications and Technical Provisions Section 10-2, "Traffic Control Requirements," shall be included and paid for in the appropriate bid item price for:

### **TRAFFIC CONTROL AND CONSTRUCTION AREA SIGNS (L.S.) BID ITEM #2**

The basis for payment for Bid Item: Traffic Control will be based on the percentage of job completed in each progress payment.

Traffic control for additive alternate work shall be considered as included in the associated additive alternate bid items and no additional compensation will be allowed therefore.

## **SECTION 10-3 EXISTING FACILITIES**

### **General**

Existing Facilities shall conform to Section 15, "Existing Facilities," of the Standard Specifications, the Plans and these Technical Provisions and all other applicable project specifications.

### **Protect Existing Facilities to Remain**

The Contractor shall work around and protect all existing improvements to remain, including but not limited to existing utilities, monumentation, bench marks, storm drainage facilities, utility vaults, traffic detector loops, home runs and handholes, concrete and asphalt concrete pavement, pavement markings, landscaping, irrigation facilities, and appurtenances that are within or adjacent to the construction areas.

The Contractor shall notify Underground Service Alert (USA) prior to beginning any work. Notification shall be in full compliance with USA.

Existing utility lines are not shown on the exhibit. The Contractor is responsible for locating and field verifying the locations of all existing utilities prior to all construction activities, and protecting all facilities during construction. The Contractor shall protect existing electroliers when placing construction signs.

The Contractor shall immediately repair or remove and replace any item damaged or injured by his operations at his sole expense and to the satisfaction of the Engineer. The Contractor shall immediately notify the appropriate owner of the improvement or facility and the Engineer of any damage as a result of his operations to existing improvements or facilities. If the improvement belongs to a private residence and the property owner or occupant is not at home, such notification shall be attached to the front door of the property. All underground facilities that are damaged by the Contractor during construction shall be restored by the Contractor within two (2) hours after the damage is done.

### **Remove Existing Concrete**

Existing sidewalk, driveway, curb, gutter and base material shall be removal as necessary to construct the required improvements. Existing concrete shall be saw cut along existing score lines where possible to full depth prior to removal. Any concrete broken due to the Contractor's failure to comply with these requirements shall be removed and replaced at the Contractor's expense. Asphalt concrete shall be saw cut at least 12 inches from the lip of gutter in a neat straight line to accommodate form boards.

### **Adjust Facilities to Grade**

All existing storm manholes, sanitary sewer manholes, water valves, traffic signal boxes, home runs and handholes, and monument boxes within the project limit of work area shall be adjusted to grade in accordance with Section 15 "Existing Facilities," of the Standard Specifications, the Plans and these Technical Provisions. Where existing facilities to be adjusted are located in traffic areas, said facilities shall be modified to handle traffic loads and retrofitted with traffic covers.

The City shall be notified seven (7) working days prior to adjusting any facilities to grade. All work shall be done without any interruption to services provided by the facility.

Frames and covers shall be removed, transported, and stored without damage. Any items damaged shall be replaced at the Contractor's expense. Pre-existing damage must be brought to the Engineer's attention prior to commencement of any work. All facilities shall be adjusted to grade within fourteen (14) working days after the final asphalt overlay has been placed on each street. The covers shall be raised by excavating the frame and cover in a neat concentric circle with a diameter not greater than necessary to loosen and adjust the frame with the cover and the concrete collar.

At the direction of the Engineer, the Contractor shall use quick set concrete for all collars. Class A concrete mix (564 pounds cement per cubic yard concrete) shall be used to fill the void to an elevation 1" to 1.5" below finish grade. After three (3) days of concrete set, a tack coat of undiluted SS-1H asphalt emulsion shall be applied to all concrete and vertical surfaces. The asphalt concrete surface course to be applied shall be Type A, 1/2" maximum - medium gradation, compacted to a minimum of 95 percent. Paving asphalt shall be AR 8000 / PG 64-16. Any facilities that are adjusted to grade, but are not to the satisfaction of the Engineer, shall be removed and re-adjusted within four (4) working days of being notified to do so by the Engineer. All required asphalt, tack coat and concrete required for raising facilities to grade shall be paid for under this contract item.

Monument boxes in digout or leveling course areas shall be raised to the new grade without disturbing the existing monument, or the Contractor shall be responsible for obtaining services of a registered Surveyor or Civil Engineer to tie out the existing monument, remark, and reset the monument following the raising of the box. The Contractor shall be responsible for filing the appropriate Corner Records as necessary for relocation of the monument, and shall provide a copy of all recorded documentation to the Town prior to project acceptance.

New monument boxes, including frames and covers shall be installed to grade around those monuments that do not have existing boxes. Any new monument boxes, frames, and covers needed shall be provided by the Town. All covers shall be stable under traffic.

The Contractor shall submit to the Engineer, for review, the manhole, frame, cover, and monument boxes to be used on this project.

The Contractor shall clean all AC debris and tack oil off of utility covers caused by the Contractor's operation.

### **Measurement and Payment**

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work in compliance with the Plans, Specifications, and Section 10-3, "Existing Facilities," of the Technical Provisions shall be included and paid for in the price per each (Ea.) price for:

**ADJUST SANITARY MANHOLE TO GRADE (EA.)**

**BID ITEM #3**

<b>ADJUST WATER VALVE BOX COVER TO GRADE (EA.)</b>	<b>BID ITEM #4</b>
<b>RELOCATE WATER METER (EA.)</b>	<b>BID ITEM #5</b>
<b>RELOCATE MAIL BOX (EA.)</b>	<b>BID ITEM #6</b>
<b>ADJUST UTILITY BOX COVER TO GRADE (EA.)</b>	<b>BID ITEM #7</b>
<b>REMOVE CONCRETE CURB AND GUTTER (LF)</b>	<b>BID ITEM #8</b>
<b>REMOVE WOOD CURB</b>	<b>BID ITEM #15</b>

## **SECTION 10-4 ROADWAY DIGOUTS AND RECONSTRUCTION**

### **General**

Asphalt concrete digouts shall conform to Section 39, "Asphalt Concrete," of the Standard Specification, the Plans and these Technical Provisions. The Contractor shall remove and replace the asphalt concrete pavement and subgrade material to a depth of eight (8") inches at locations shown on the plans or marked in the field by the Engineer.

Existing roadway sections may contain road paving fabric. All costs associated with the removing, and disposing of AC and subgrade material including those containing road paving fabric shall be borne by the Contractor.

The Contractor shall notify the Engineer a minimum of five (5) working days prior to any digout repair work done within any signalized intersection, which would cause expected interference/interruption to the existing traffic signal system and/or traffic control.

Prior to beginning any work on the digout and repairs, the Contractor shall arrange for and conduct a field review of the job and mark out the locations of each digout with the Engineer. The Engineer and Contractor shall record the agreed upon dimensions for each digout at each location. Size of the digouts shall not vary from this agreement unless specified in writing by the Engineer. Additional compensation shall not be allowed for digouts in excess of the agreed upon size.

**The contract price per square foot shall remain the same despite any increase or decrease in contract quantities.**

All digouts shall be removed and replaced with a new asphalt concrete section as shown on the project plans. Upon removing the existing AC, all loose material shall be removed to a solid surface (95% compaction) or the Contractor shall compact the upper four inches (4") of the subgrade (or aggregate base) to not less than 95% relative compaction.

If the existing AC section is greater than eight (8") inches for the digouts, the Engineer shall be

immediately notified. Upon the approval of the Engineer, the entire AC section and all loose material shall be removed to a solid surface (95% compaction) or the Contractor shall compact the upper six inches (6") of the subgrade (or aggregate base) to not less than 95% relative compaction. A new AC section equal in depth to the section removed shall be placed on a prorated basis. The Engineer and Contractor shall record and agree on the prorated cost for the digouts before performing any work.

Asphalt concrete shall be Type A, 1/2" maximum-medium gradation using AR 8000 / PG 64-10 asphalt binder unless otherwise approved by the Engineer. A tack coat of undiluted SS-1H emulsified asphalt shall be placed on all exposed AC and concrete surfaces prior to placement of asphalt.

All excavations shall be backfilled with the final asphalt section or securely covered with traffic plates, with asphalt concrete cutback placed around the edges of the steel plate with a minimum 18" taper and plates spot welded together and pinned to the AC. By the end of each working day all streets shall be fully available to all types of traffic and free from hazards.

The Contractor shall be responsible for protecting all utility facilities and City monuments located within the project area. The Contractor shall be responsible for repairing any damage to the utility facilities caused by the Contractor's operations and shall be responsible for hiring a surveyor and filing the necessary paper work for any Town monument that needs to be reset due to the Contractor's work.

Pavement markers and thermoplastic markings that are removed as part of the dig-outs are considered included in this item of work, and no further compensation will be allowed therefore.

### **Measurement and Payment**

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, for removal, legal disposal or as specified herein and as directed by the Engineer, including installation of aggregate base material, tack coats and paint binders, and for doing all of the work involved in compliance with the plans, specifications and Section 10-4, "Roadway Digouts and Reconstruction," of the Technical Provisions, shall be included in the per square foot (S.F.) price paid for:

**4" AC OVER 4" AB ROADWAY RECONSTRUCTION**

**BID ITEM #11**

## **SECTION 10-5 WEDGE GRIND**

### **General**

Contractor shall furnish all necessary supervision, labor, materials, construction tools and equipment to complete asphalt removal and proper disposal at locations specified by the Engineer.

### **Scope**

Asphalt shall be wedge grinded prior to AC overlay as noted on the plans. Wedge grind shall consist of longitudinal wedge cut of 0.17' by 6' (minimum) along gutter lines, and 0.17' by 20'

(minimum) at conforms to existing streets. Refer to the details provided in the project plans. The locations to wedge grind include, but are not limited to, any which abut any permanent structures such as curbs, concrete curbs, sidewalks, driveways, concrete slabs and catch basins. Grinding shall be in conformance with Section 42-3, "Grinding," of the Standard Specifications. Any sections of asphalt that becomes loose after grinding shall be removed and disposed of by the Contractor at the Contractor's expense.

Conform grinding will be necessary at the beginning and ending of each street section such that the final asphalt surface provides a smooth transition to the adjacent existing surface. Conform grinding shall be twenty (20') long and extend the entire width of the street.

Contractor to coordinate with Engineer the exact limits of conform grinding. The width of grind may exceed full lane width as required. Coordination to include field meeting with contractor, and providing traffic control and survey equipment to determine locations of potential drainage and smoothness issues.

Pavement wedge grind shall not be allowed more than 48 hours prior to schedule overlay operations without written authorization from the Engineer.

Cold milling/wedge cutting machines shall be operated so as not to produce fumes or smoke. They shall be capable of planning/milling/wedge cutting the pavement without requiring the use of a heating device to soften the pavement during, or prior to, the cutting operation.

The Contractor shall be responsible for maintaining all wedge cuts, using cutback or other methods to prevent tire and suspension damage to vehicles and to prevent hazards to bicyclists and pedestrians.

Wedge cutting at corners, returns and hard to get areas shall be done with special grinding equipment capable of grinding such areas. Wedge cutting or grinding may encounter existing paving fabric on previously overlaid streets. No additional payment will be made for this condition. The same method shall be used on all structures that area left above the traveled asphalt surface.

### **Measurement and Payment**

Asphalt wedge grind shall be measured by the square foot and as marked in the field by the Engineer. No payment shall be made for materials removed outside of the limits marked by the Engineer.

Full compensation for furnishing all labor, material, equipment, tools, and all other incidentals necessary to perform the full scope of work as described above, for removal, legal disposal or as specified herein and as directed by the Engineer including temporary striping and delineation, tack coats and paint binders, and for performing all of the work involved in compliance with the Plans, Specifications and Section 10-5, "Wedge Grind," of the Technical Provisions shall be included in the per square foot (S.F.) price paid for:

**2" WEDGE GRIND**

**BID ITEM #12**

**SECTION 10-6 HOT MIX ASPHALT PAVEMENT & OVERLAY****General**

This work shall be done as shown on the plans in agreement with provisions of Section 39, "Asphalt Concrete," of the Standard Specifications and these Technical Provisions. Where used herein, the references to Section 39 and 92 refer to the State Standards Specifications 2018.

Work will be to prepare the surface and place Hot Mix Asphalt (HMA) overlay. Hot Mix Asphalt paving shall be done by the "Standard" Construction Process in Section 39 and as shown on the plans and directed by the Engineer. The thickness of HMA pavement shall be as shown on the plans.

**Materials**

- A. **Hot Mix Asphalt.** All types of Hot Mix Asphalt used shall comply with the specifications listed below. HMA may use reclaimed asphalt under provision of Section 39-2.02A(3)(c), "Reclaimed Asphalt Pavement," of the Standard Specifications and as approved by the Engineer.

Hot Mix Asphalt, unless noted otherwise, shall be ½-inch maximum Type A and shall conform to the provisions in Section 39-2, "Hot Mix Asphalt," of the Standard Specifications, and these requirements. Asphalt binder shall be steam refined paving asphalt of grade PG 64-10, conforming to the requirements of Section 92 of Standard Specifications.

- B. **Tack Coat.** The tack coat shall be SS-1h meeting the requirements of Section 94 of the Standard Specifications.
- C. **Job Mix Formula.** Submit, in writing, a satisfactory job mix formula for each mixture to the Engineer at the pre-construction meeting. The job mix formula shall be in effect until a change is approved in writing by the Engineer.

Submit the manufacturer material specification sheet(s) and MSDS for all chemicals.

Submit the manufacturer material specification sheet(s) for the Tack Coat binder.

Submit HMA Job Mix Formula (JMF) for each type of asphalt from each plant source used. Mix designs must be provided a minimum of five (5) days in advance of use for approval by the Engineer. Last minute substitutions or changes in plants not previously approved will not be allowed.

## **Construction Methods**

- A. **Cleaning of Street Surface.** Adjacent streets and haul routes must be swept prior to opening the street to traffic after paving operations.
- B. **Placement.** Hot Mix Asphalt shall not be placed when the atmospheric temperature is below 50 degrees Fahrenheit. Hot Mix Asphalt shall not be placed during raining conditions.

Any time new HMA is to be placed in contact with existing pavement and all paved surfaces on which any layer of asphalt concrete is to be placed on, the surface shall be cleaned and a tack coat of asphaltic emulsion shall be applied to ensure proper bond. Tack coat shall be applied according to Section 39-2.01C(3)(f), "Tack Coat," of the Standard Specifications.

Where transverse joints are wedge cut in the pavement at conform lines, no drop-off shall remain between the existing pavement and the roadway reconstruction area when the pavement is opened to public traffic. If HMA has not been placed to the level of existing pavement before the pavement is to be opened to public traffic, a temporary HMA taper shall be constructed. HMA for temporary tapers shall be placed to the level of the existing pavement and tapered on a slope of 12% or flatter to the level of the roadway reconstruction area. The same method shall be used on all structures that are left above the traveled asphalt surface.

Hot Mix Asphalt for tapers may be spread and compacted by any method that will produce a smooth transition in the riding surface. Hot Mix Asphalt tapers shall be completely removed, including removing all loose material from the underlying surface, before placing the permanent surfacing. Kraft paper, or other approved bond breaker, may be placed under the conform tapers to facilitate the removal of the taper.

- C. **Control of Oil Tracking.** The Contractor will control tracking of tack coat during paving operations to eliminate tracking of oil on to existing pavement and non-asphalt pavement areas. The Contractor will be required to clean any area that has oil tracked as a result of paving operations as a condition of payment for the items in this specification.
- D. **Drop-Offs.** Where the end of the roadway reconstruction meets the existing pavement during stage construction, no drop-off shall remain between the existing pavement and the newly paved area when the pavement is opened to public traffic. If Hot Mix Asphalt has not been placed to the level of existing pavement before the pavement is to be opened to public traffic, a temporary Hot Mix Asphalt taper shall be constructed. Hot Mix Asphalt for temporary tapers shall be placed to the level of the existing pavement and tapered on a slope of 12:1 or flatter to the level of the paved area. Hot Mix Asphalt for tapers may be spread and compacted by any method that will produce a smooth transition in the riding surface. Hot Mix Asphalt



tapers shall be completely removed, including removing all loose material from the underlying surface, before placing the permanent surfacing. Kraft paper, or other approved bond breaker, may be placed under the conform tapers to facilitate the removal. This work shall be considered incidental to the various items of work associated with the placement of HMA.

- E. **Compaction.** After the bituminous mixture has been spread, struck off, and surface irregularities adjusted, it shall be thoroughly and uniformly compacted by rolling. Rolling shall be performed in such a manner that cracking, shoving or displacement will be avoided.

The Contractor shall furnish the number of rollers required by these specifications and the surface finish required in the Section 39-2.01C(15), "Compaction," of the Standard Specifications.

Equipment that does not perform satisfactorily in the opinion of the Engineer shall be disallowed and removed from the site of the work.

The completed surfacing shall be thoroughly compacted, smooth, and free from ruts, humps, depressions, or irregularities. Any ridges, indentations or other objectionable marks left in the surface of the HMA by blading or other equipment shall be eliminated by rolling or other means. The use of any equipment that leaves ridges, indentations, or other objectionable marks in the HMA shall be discontinued, and acceptable equipment shall be furnished by Contractor. Smoothness of the surface shall be as called out in Section 36-3, "Pavement Smoothness," of the Standard Specifications.

If the finished surface of the HMA does not meet the specified surface tolerances, it shall be brought within tolerance by either (1) abrasive grinding (with fog seal coat on the areas which have been ground), (2) removal and replacement, or (3) placing an overlay of HMA, the method will be selected by the Engineer. The corrective work shall be at the Contractor's sole expense.

If the abrasive grinding is used to bring the finished surface to specified surface tolerances, additional grinding shall be performed as necessary to extend the area ground in each lateral direction so that the lateral limits of grinding are at a constant offset from, and parallel to the nearest lane line or pavement edge, and in each longitudinal direction so that the grinding begins and ends at lines normal to the pavement centerline, within any ground area. All ground areas shall be neat, rectangular areas of uniform surface appearance.

HMA shall be compacted to a density between 91 and 97 percent of the maximum theoretical density as determined by California Test 309. Tests will be performed at random locations immediately following compaction. The interim results will be immediately available to the Contractor. No single test shall be less than 91 percent.

In-place density will be determined by nuclear gauge in conformance with California Test 375, Part 4.

Nuclear gauge tests for determining average in-place density shall be taken at the locations determined by the Engineer. A minimum of five (5) randomly selected locations within the lot shall be tested. Nuclear gauge readings will be correlated with asphalt cores for final acceptance.

The extent of each lot shall be determined by the Engineer. In determining the limits of each lot, consideration will be given to such factors as production rate, location (main line, shoulder, etc.), lift thickness and differences in the HMA mix.

The Contractor shall demonstrate that the compaction equipment can compact the HMA to the required density by compacting a 300-foot demonstration strip. The density of the demonstration strip shall be the average of a minimum of three (3) tests after breakdown rolling is complete. No single test result shall be below 90 percent of maximum theoretical.

If the Contractor is unsuccessful in achieving the compaction of the demonstration strip, a second strip shall be constructed and compacted. If the second demonstration strip is unsuccessfully compacted, placement of HMA shall be suspended until adequate compaction equipment, other than that unsuccessfully used, is placed into operation. No equipment shall be allowed which is unable to successfully compact a demonstration strip.

Any area, which has an interim result less than 90 percent, shall be re-worked while the mat is above 250 degrees F until the area is compacted to a density of 91.0 percent.

F. **Pav Factor.** Hot Mix Asphalt shall be compacted to a minimum 91 percent of Maximum Theoretical Density as determined by American Society of Testing Materials (ASTM) D-2041.

Finished Hot Mix Asphalt pavements, which do not conform to the specified relative compaction requirements of 91-97%, payment will be reduced using the following pay factors:

HMA Type A and B Percent of Maximum Theoretical Density	Reduced Payment Factor	HMA Type A and B Percent of Maximum Theoretical Density	Reduced Payment Factor
91.0	0.0000	97.0	0.0000
90.9	0.0125	97.1	0.0125
90.8	0.0250	97.2	0.0250
90.7	0.0375	97.3	0.0375
90.6	0.0500	97.4	0.0500
90.5	0.0625	97.5	0.0625

90.4	0.0750	97.6	0.0750
90.3	0.0875	97.7	0.0875
90.2	0.1000	97.8	0.1000
90.1	0.1125	97.9	0.1125
90.0	0.1250	98.0	0.1250
89.9	0.1375	98.1	0.1375
89.8	0.1500	98.2	0.1500
89.7	0.1625	98.3	0.1625
89.6	0.1750	98.4	0.1750
89.5	0.1875	98.5	0.1875
89.4	0.2000	98.6	0.2000
89.3	0.2125	98.7	0.2125
89.2	0.2250	98.8	0.2250
89.1	0.2375	98.9	0.2375
89.0	0.2500	99.0	0.2500
< 89.0	Remove and Replace	> 99.0	Remove and Replace

**G. Measurement and Payment**

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals for hot mix asphalt (HMA) pavement, asphaltic emulsion, obtaining necessary compaction, and placement and removal of temporary pavement transitions as required and for performing all of the work involved in compliance with the Plans, Specifications and Section 10-6, "Hot Mix Asphalt Pavement," of the Technical Provisions shall be included in the per square foot (SF) price paid for:

- |                                |                     |
|--------------------------------|---------------------|
| <b>2" ASPHALT OVERLAY (SF)</b> | <b>BID ITEM #14</b> |
| <b>AC DIKE (LF)</b>            | <b>BID ITEM #22</b> |

**SECTION 10-7 AGGREGATE BASE**

Aggregate base shall be Class 2 and shall conform to the provisions of Section 26, "Aggregate Bases," of the Standard Specifications and these technical provisions.

The R-value requirement specified in Section 26-1.02B, "Class 2 Aggregate Base," will not be waived if the Sand Equivalent is 35 or more.

Aggregate base shall be compacted to 95% relative compaction per Section 26-1.03E "Compacting".

**Measurement and Payment**

Aggregate base shall not be separately paid for but shall be considered as included in the payments for other items of work, including, but not limited to, 4" AC OVER 4" AB DIGOUTS & REPLACE, 4" AC OVER 4" AB ROADWAY RECONSTRUCTION, PCC ROLLED CURB, PCC DRIVEWAY, CONCRETE VALLEY GUTTER, CONCRETE

APRON, CONCRETED DRIVEWAY CONFORM, and WALKWAY CONFORM. This shall include full compensation for furnishing all labor, materials, compaction, including tools, equipment and incidentals.

## **SECTION 10-8 PAVEMENT MARKER, THERMOPLASTIC MARKING, AND STRIPING REMOVAL**

### **General**

Pavement marker, markings and striping removal shall conform to the plans and these Technical Provisions.

Existing thermoplastic pavement markings and striping, and paint markings and striping shall be removed by grinding prior to placement of the new surface. The grinder shall be specifically designed for the purpose of removing existing traffic stripes and markings and shall conform to the provisions of Section 89-9.0B, "Remove Traffic Stripes and Pavement Markings," of the Standard Specifications. Grinding operations shall be conducted to keep all removed pavement material from entering the storm drain system. The operation shall be controlled and contained so as not to impair the safe passage of traffic adjacent to the work site. Existing pavement markers shall be removed prior to placing the new surfacing.

All traffic striping and pavement markings (legends) covered by or removed prior to the surfacing or otherwise damaged by the Contractor's operations shall be replaced in kind in the same location and count.

Existing pavement striping, markings, and markers which are outside the work area are not to be removed and shall be protected by the Contractor. Any striping, markings, or markers which are to remain, which are damaged or rendered useless by the Contractor's operations, shall be restored by the Contractor to the Engineer's satisfaction and at the Contractor's sole expense.

The Contractor shall review all existing striping and pavement markings in the field prior to submitting a bid.

### **Measurement and Payment**

Full compensation for furnishing all labor, materials, tools, flaggers, equipment, and all incidentals, and for doing all of the work, including but not limited to, removal of striping, removal of pavement marking, removal of raised pavement markers, the preservation of existing striping outside the work limits, in compliance with the plans, specifications and Section 10-8, "Pavement Marker, Thermoplastic Marking and Striping Removal," of the Technical Provisions, including full compensation for additive alternate work, shall be included and paid for in the lump sum (L.S.) price for:

### **REMOVE & REPLACE TRAFFIC STRIPING & MARKINGS (LS) BID ITEM #16**

## **SECTION 10-9 TRAFFIC STRIPES, PAVEMENT MARKINGS, AND MARKERS**

### **General**

Painting traffic stripes (traffic lines) and pavement markings (legends) shall conform to the following: Provisions of Section 84-2, "Traffic Stripes and Pavement Markings" of the Standard Specifications, the California MUTCD, the Standard Plans, detail drawings and these Technical Provisions. Traffic Stripes and marking shall be installed as shown on the plans or as directed by the Engineer.

All traffic stripes and pavement markings shall be laid out in the field by the Contractor and reviewed and approved by the Engineer five (5) working days prior to any final installation. Any striping and/or marking installed by the Contractor that the Engineer has not pre-approved, and that the Engineer determines are installed improperly or in the wrong locations, shall be removed and replaced to the satisfaction of the Engineer at the Contractor's sole expense.

### **Raised Pavement Markers**

Pavement markers shall conform to Section 81-3, "Pavement Markers," of the Standard Specifications, the California MUTCD and these Technical Provisions. All non-reflective pavement markers shall be ceramic. Plastic pavement markers shall not be allowed.

Adhesive shall be hot-melt bituminous adhesive conforming to Section 81-3, "Pavement Markers," of the Standard Specifications and of these Technical Provisions.

Markers shall not be placed on new asphalt concrete surfacing until the surfacing has been opened to public traffic for a period of not less than seven days when hot melt bituminous adhesive is used, and not less than 14 days when epoxy adhesive is used. Placement of pavement markers shall be completed within three weeks of application of the new resurfacing of the respective roadway.

All pavement markers in place (outside the limits of the work) shall be protected from damage and shall be clean and undamaged after completion of the project. Any damage to the newly placed or existing markers due to the failure of the Contractor to protect the work, and correction of errors, shall be repaired by the Contractor at no additional cost.

Caltrans Type C Red-Clear Reflective marker shall replace all Caltrans Type G One-Way Clear Reflective markers for all Caltrans Standard Striping Details. The clear side of the reflective marker shall face the on-coming direction of travel.

Blue reflective fire hydrant pavement markers shall be installed conforming to the provisions of the California MUTCD Section 3B.11, "Raised Pavement Markers," and Figure 3B-102 (CA).

A Certificate of Compliance shall be furnished as specified in Section 6-2.03C, "Certificates of Compliance," of the Standard Specifications for reflective pavement markers. Said certificate shall also certify that the reflective pavement markers conform to the prequalified testing and approval of Caltrans, division of Traffic Operations, and were manufactured in accordance with the approved quality control program.

### **Thermoplastic Traffic Stripe and Pavement Marking**

Thermoplastic traffic stripes (traffic lines) and pavement markings shall be applied in conformance with the provisions in Section 84-2, "Traffic Stripes and Pavement Markings," of the Standard Specifications and these Technical Provisions.

Thermoplastic material shall be free of lead and chromium, and shall conform to the requirements in State Specification PTH-02ALKYD.

Retroreflectivity of the thermoplastic traffic stripes and pavement markings shall conform to the requirements in ASTM Designation: D 6359-99. White thermoplastic traffic stripes and pavement markings shall have a minimum initial retroreflectivity of  $250 \text{ mcd m}^{-2} \text{ lx}^{-1}$ . Yellow thermoplastic traffic stripes and pavement markings shall have a minimum initial retroreflectivity of  $150 \text{ mcd m}^{-2} \text{ lx}^{-1}$ .

The color for green back symbols shall meet FHWA specifications for "green."

Where striping joins existing striping, as shown on the plans, the Contractor shall begin and end the transition from the existing striping pattern into or from the new striping pattern a sufficient distance to ensure continuity of the striping pattern.

Payment for crosswalks and limit lines shall be measured from the edge of curb or edge of gutter, whichever is less, in linear feet, and no additional compensation shall be allowed therefore.

Thermoplastic traffic stripes and pavement markings shall be free of runs, bubbles, craters, drag marks, stretch marks, and debris. Thermoplastic shall be extruded and placed in one coat and shall be placed five days after the final surfacing. Sprayable thermoplastic is not allowed. Longitudinal limit line shall be white and 12" in width.

### **Application**

Use preheaters with mixers having 360 degree rotation to preheat the thermoplastic material. Apply the thermoplastic in a single uniform layer by extrusion method. Completely coat and fill voids in the pavement surface with the thermoplastic.

### **Extruded Thermoplastic**

Apply extruded thermoplastic at a temperature from 400 to 425 degrees F, unless a different temperature is instructed by the manufacturer. Apply extruded thermoplastic for a traffic stripe at a rate of at least 0.20 lb/ft of 4-inch wide solid stripe. The applied thermoplastic traffic stripe must be at least 0.060 inch thick. An applied thermoplastic pavement marking must be from 0.100 to 0.150 inch thick. Apply glass beads to the surface of the molten thermoplastic at a rate of at least 8 lb/100 sq ft.

### **Measurement and Payment**

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all of the work in compliance with the plans, specifications and Section 10-10, "Traffic Stripes, Pavement Markings and Markers," of the Technical Provisions shall be paid in the lump sum (L.S.) price for:

**REMOVE & REPLACE TRAFFIC STRIPING & MARKINGS (LS) BID ITEM #16**

**SECTION 10-10            CONSTRUCTION STAKING AND SURVEYS**

**General**

Contractor shall furnish all surveying and construction staking required to complete the construction as shown on the plans. The Contractor shall provide the Engineer with a schedule for surveying activities.

**Measurement And Payment**

The contract lump sum price paid for Construction Staking shall include full compensation for furnishing all labor, material, equipment, tools, and incidentals necessary to perform the full scope of work as described above, as shown on the plans, as specified in this section and as directed by the Engineer including all field and office work necessary to stake the project.

Payments for the lump sum item for Construction Staking shall be determined based on the percentage of the bid item work completed as determined by the Engineer at the time the progress payment is prepared.

**CONSTRUCTION STAKING AND SURVEYS**

**BID ITEM #17**

**SECTION 10-11            CONCRETE IMPROVEMENTS**

**General**

Existing and new concrete facilities including, but not limited to, curb, gutter, pavement, slab, walkways, and driveways shall be removed and replaced or constructed at the locations indicated on the plans or as directed by the Engineer.

**Coordination**

Contractor shall notify the City 48 hours in advance of concrete removal.

**Submittals**

The Contractor shall furnish a concrete mix design to the Engineer at least ten (10) working days prior to the start of the work.

**Material And Equipment**

### **Concrete Mix Design**

The Contractor shall furnish a concrete mix design to the Engineer at least ten (10) working days prior to the start of the work, based on the following guidelines:

All concrete facilities shall be constructed with Class B, 5 Sack mix which meets the following requirements:

Compressive Strength: 3000 psi @ 28 days (2500 psi min in 48 hrs for commercial driveways and cross valley gutters)

Maximum Slump: 4 inches

Lamp Black: 1 lb. / cy

The Contractor shall be responsible for all costs associated with the required mix design.

### **Quality Assurance Field Testing**

Field testing shall include testing for concrete slump as per ASTM C-143 and compressive strength (C39). Such testing shall be at a frequency determined by the Engineer and shall be performed by the Owner's laboratory at the Owner's expense. The Contractor shall furnish the concrete necessary for casting test cylinders.

## **EXECUTION**

### **GENERAL**

All work shall conform to the provisions of Section 90, "Concrete," of the Standard Specifications.

Concrete removal work shall conform to the provisions in Section 15-1.03B, "Removing Concrete," of the Standard Specifications and these Technical Specifications. The existing concrete shall be sawcut full depth prior to removal. Any concrete broken due to the Contractor's failure to comply with these requirements shall be removed and replaced at the Contractor's expense. All concrete removed shall become the property of the contractor to be disposed of outside the right of way, each day work occurs.

The line and grade of the replaced facilities shall conform to the existing facilities. In most instances, this will consist of a straight line between existing facilities. In instances where existing sidewalk has been raised by tree roots, the line and grade may be adjusted to avoid tree roots, as directed by the Engineer.

The Contractor shall water test all repaired curbs and gutters, cross gutters, and other repaired drainage facilities in the presence of the City's Inspector.

### **Protection of Existing Facilities**



The contractor shall protect existing facilities from damage, and discoloration from concrete splash. Adjacent concrete facilities shall be covered during concrete placement to prevent concrete splash and excess concrete from staining the adjacent concrete. After initial placement, strikeoff and finishing, the protection shall be removed and the adjacent concrete cleaned.

Vertical existing facilities such as light poles, utility poles, walls, etc. shall be protected with plastic extending a minimum of three feet above the concrete surface. After initial placement, strikeoff and finishing, the protection shall be removed and the vertical surfaces cleaned.

### **Subgrade**

After the subgrade is prepared, moisture conditioned, and compacted to 90% relative compaction at zero to three percent over optimum moisture content, the Contractor shall continuously maintain the sub-grade in a uniform condition at the moisture content obtained during sub-grade compaction until the concrete is placed.

In locations where existing concrete improvements are being replaced, existing base material may be re-compacted and used without over excavation and placement of additional baserock. For new concrete improvements, over excavation and placement of base material in accordance with the details shall be required.

### **Forming**

Wooden forming shall be of two-inch nominal thickness or bender boards totaling approximately two-inches in thickness staked at two foot intervals. The maximum gap at the bottom of the forms shall be 1-3/4 inches.

### **Tolerances**

The maximum variation from design elevation shall not exceed +/- 0.02 feet. In some instances, particularly in critical drainage areas, tolerances may be reduced to zero. Concrete facilities shall be installed to maintain or provide positive drainage. Questions regarding applicable tolerances shall be directed to the Engineer forty-eight hours in advance of the work.

When shown on the drawings, the concrete shall be set at the design elevations. When existing facilities are to be removed and replaced, they shall conform to the existing elevations and grades. Generally, this will be at a straight line between the start and end points of the removal.

### **Adjusting Utility Boxes and Manholes to New Finish Grade**

Contractor shall refer to Section 10-3, "Existing Facilities" of these Technical Specifications.

### **Placing and Finishing**

The concrete shall be deposited on a moist grade/base in such a manner as to require as little re-handling as possible. Workmen shall not be allowed to walk in the freshly mixed concrete with boots or shoes coated with earth or foreign substances.

In general, adding water to the surface of the concrete to assist in finishing operations shall not be permitted.

Before final finishing is completed and before the concrete has taken its initial set, the edges shall be carefully finished with the radius shown on the plans or a radius to match the existing construction.

Concrete shall be thoroughly consolidated against and along the faces of all forms and adjacent concrete. After the forms are removed, excess concrete below the form surface shall be removed to be flush with the form face.

All new concrete shall match existing facilities in texture, color, and appearance. Surfaces shall be broom finished transversely to the line of pedestrian traffic. The Contractor shall clean at his expense all discolored concrete. The concrete may be cleaned by abrasive blast cleaning or other methods approved by the Engineer. Repairs shall be made by removing and replacing the entire unit between score lines or joints.

### **Concrete Protection**

The Contractor shall always have materials available to protect the surface of the fresh concrete against rain. These materials shall consist of burlap, curing paper, or plastic sheeting. If plastic sheeting is used, it shall not be allowed to contact finished concrete surfaces.

The Contractor shall also protect the concrete against traffic and vandalism. If the concrete is damaged or vandalized, the Contractor shall make the necessary repairs at its own expense. The repair procedure for damaged or vandalized concrete shall be approved in advance by the Engineer.

### **Curing**

Concrete shall be cured by protecting it against loss of moisture, rapid temperature change, and mechanical injury for at least three days after placement. White or clear liquid membrane compound shall be used. After finishing operations have been completed, the entire surface of the newly placed concrete shall be covered by the curing medium. The edges of the concrete exposed by the removal of forms shall be protected immediately to provide these surfaces with continuous curing treatment.

The concrete shall be allowed to cure for seventy-two hours prior to placing adjacent asphalt concrete.

### **Joints**

Control joints shall be placed at a maximum spacing of fifteen feet.

Control joints in all PCC facilities, except sidewalks, shall be formed by tooling a deep joint or by using expansion joint material. If expansion joint material is used, a minimum of two 1/2 inch by eighteen inch dowels shall be used with additional dowels placed every twenty-four inches.

In sections of new curb and gutter adjacent to an existing tree, a deep joint shall be placed through the curb and gutter, aligned with the center of the tree trunk.

Expansion joints shall be required at a maximum of sixty foot intervals on curbs / curbs and gutters. Expansion joints shall also be required on all corners of curbs / curbs and gutters and other locations with discontinuities or reentrant corners which may cause cracking.

### **Cleanup and Backfill**

After the concrete is placed, cured, and the forms have been removed, the Contractor shall clean the site of all concrete and forming debris. The aggregate base shall be replaced to match the existing base and compacted to 95% relative compaction. The pavement shall be restored in accordance with Section 10-4, "Asphalt Concrete Digout & Repairs," of these Technical Provisions. A minimum of two lifts shall be used, none of which shall exceed three inches, and the top lift shall be a minimum of 1-1/2 inches thick. The total thickness of the restored pavement shall match that of the existing pavement.

For pavements to be overlaid or resurfaced, the aggregate base and asphalt concrete may be replaced with cement sand slurry in conformance to Section 19-3.02E, "Slurry Cement Backfill", of the Standard Specifications.

After curing has been completed and the forms have been removed from the new curb and gutter or sidewalk, the void between the new concrete and the existing parkway shall be filled with clean native material or imported topsoil and the entire parkway left in a clean and orderly condition.

For concrete removed but not replaced, the resulting void after excavation shall be backfilled with clean native material or topsoil.

### **Construction Sequence**

For purposes of this section, the term "under construction" shall mean from the beginning of placing wooden forms, or other such work that makes driving over the particular concrete improvement location impossible, until the formwork has been removed and temporary fills or ramps have been placed allowing vehicular passage over the area.

Traffic shall be allowed to pass over the newly constructed improvements no later than the end of the normal work day on the third calendar day after formwork placement began.

## **Measurement and Payment**

Concrete Improvements shall be measured and paid per square foot, except as indicated below. The contract price paid for Concrete Improvements shall include full compensation for performing the scope of work specified in Section 10-12, "Concrete Improvements," of these Technical Specifications, including, as appropriate, but not limited to, sawcutting of existing concrete or pavement, removal and disposal of existing materials (including adjacent items such as; pavement, base, curb, gutter, walk, wall, driveway, structure, landscaping, earth and any other item that is required for the specified concrete work), installation and removal of formwork, construction of concrete improvements including installation and compaction of aggregate base material, finishing, application of curing compound, restoration of surrounding improvements including planting, irrigation repairs, asphalt concrete repairs, etc., painting of curbs to match pre-construction conditions, replacement of engraved curb markings, vehicular and pedestrian accommodations, notification of adjacent residents, posting of no parking signs and clean-up. Asphalt concrete repairs shall include but not limited to replacement of asphalt concrete at conforms and concrete formwork in the installation of concrete walkway, driveway, and curb & gutter.

<b>PCC ROLLED CURB</b>	<b>BID ITEM #18</b>
<b>PCC DRIVEWAY</b>	<b>BID ITEM #19</b>
<b>PAVER DRIVEWAY</b>	<b>BID ITEM #20</b>
<b>CONCRETE VALLEY GUTTER</b>	<b>BID ITEM #21</b>

## **SECTION 10-12 CONFORMS**

### **General**

Existing driveways areas between existing concrete driveways and new back of curb shall be removed and replaced or constructed at the locations indicated on the plans or as directed by the Engineer. All conforms at existing driveways will be replaced with like materials including pavers, concrete, asphalt, or gravel, or as shown on the plans. Asphalt driveways can also be replaced with concrete.

### **Coordination**

Contractor shall notify the City and affected residents 48 hours in advance of existing driveway removal/reconstruction.

Contractor shall obtain approval from the City prior to cutting, pruning or removing any tree roots while performing driveway repairs.

## **Submittals**

The Contractor shall furnish sample of like materials (paver, concrete, asphalt, or gravel) to the Engineer at least ten (10) working days prior to the start of the work.

## **Material And Equipment**

### **Paver Driveway**

Refer to Technical Provision “CONCRETE IMPROVEMENTS”

Concrete for driveways shall have lampblack applied and match the color of existing concrete as close as practical. If contractor is unable to salvage sufficient pavers from the existing improvements to facilitate reconstruction, new pavers to match existing will be required. Provide samples for approval prior to construction.

### **Concrete Driveway**

Refer to Technical Provision “CONCRETE IMPROVEMENTS”

Concrete for driveways shall have lampblack applied and match the color of existing concrete as close as practical.

## **Execution**

The line and grade of the replaced facilities shall conform to the existing facilities and meet the new rolled curb. In most instances, this will consist of a straight line between existing facilities and new improvements.

Construction or repair of driveways shall not proceed without notification to the property owner(s). Driveways 16 feet in width or wider shall be constructed in two phases such that vehicular access is always available. For driveways narrower than 16 feet, or for locations that will be completed with a single pour, the Contractor shall provide steel plates to bridge the freshly poured concrete for at least three days, thereby allowing vehicle access. When construction of driveways requires sawcut and replacement of existing private driveways, replace with like materials.

The contractor is responsible for the relocation or reconstruction of any amenities or structures within the project limits, including mailboxes, fences, signs, planters, landscaping, irrigation, utilities, etc. Any additional work requested by property owners, which is outside the project limits or is not impacted by the construction activities, shall be the responsibility of the property owners.

### **Subgrade**

After the subgrade is prepared, moisture conditioned, and compacted to 90% relative compaction at zero to three percent over optimum moisture content, the Contractor shall continuously maintain

the sub-grade in a uniform condition at the moisture content obtained during sub-grade compaction until the concrete is placed.

### **Tolerances**

The maximum variation from design elevation shall not exceed +/- 0.02 feet. In some instances, particularly in critical drainage areas, tolerances may be reduced to zero. Concrete facilities shall be installed to maintain or provide positive drainage. Questions regarding applicable tolerances shall be directed to the Engineer forty-eight hours in advance of the work.

When shown on the drawings, the “like material” (concrete, asphalt, pavers, or gravel) shall be set at the design elevations. When existing facilities are to be removed and replaced, they shall conform to the existing elevations and grades. Generally, this will be at a straight line between the start and end points of the removal.

### **Placing and Finishing**

All new pavement section shall match existing facilities in texture, color, and appearance.

### **Pavement Protection**

The Contractor shall also protect the pavement against traffic and vandalism. If the pavement is damaged or vandalized, the Contractor shall make the necessary repairs at its own expense. The repair procedure for damaged or vandalized pavement shall be approved in advance by the Engineer.

### **Cleanup and Backfill**

After the pavement section is placed, the Contractor shall clean the site of all debris. The aggregate base shall be replaced to match the existing base and compacted to 95% relative compaction.

### **Measurement and Payment**

Conform at Existing Driveway at concrete driveway shall be measured and paid on a square foot basis and as defined in the Section 10-11, “Concrete Improvements” of these Technical Provisions.

The contract price for gravel driveway conforms shall include all work required to remove the existing driveway, remove and dispose of existing gravel and soil materials, grading, and compact the underlying subgrade. Aggregate Base used shall be included in the price per square foot.

The contract price for concrete driveway conforms shall include all work required to sawcut the existing concrete driveway, remove and dispose of existing pavement and soil materials, grading, and compact the underlying subgrade. Concrete used shall be included in the price per square foot.

The contract price for walkway conforms shall include all work required to sawcut the existing concrete, salvage paver stones, remove and dispose of existing concrete and soil materials, grading,

and compact the underlying subgrade. The work shall include pouring replacement concrete base, bands and border, and setting salvaged or replacement paver stones. Concrete and replacement paver stones (if needed) used shall be included in the price per square foot.

**CONCRETE DRIVEWAY CONFORM** **BID ITEM #23 (SF)**

**ASPHALT CONCRETE DRIVEWAY CONFORM** **BID ITEM #24 (SF)**

**NATIVE SOIL CONFORM** **BID ITEM #25 (SF)**

**WALKWAY CONFORM** **BID ITEM #26 (SF)**

## **SECTION 10-13 SIGNS**

### **GENERAL**

#### **WORK INCLUDED**

- A. Removal, relocation and installation of all traffic (vehicular and pedestrian/bicycle) and street name signs as shown on the plans.
- B. Supplying all labor, materials, equipment and apparatus not specifically mentioned herewith or noted on the plans, but which are incidental and necessary to complete the work specified.

#### **REFERENCES, CODES AND STANDARDS**

- A. All signing shall conform to the latest revision of the 2014 California Manual on Uniform Traffic Control Devices (CAMUTCD) and these specifications.

#### **SUBMITTALS**

Submit for approval by the Engineering the following:

- A. Manufacturer supplier's certificates of compliance with the specified standards for the products identified below.

### **MATERIALS**

#### **TRAFFIC SIGN PANELS**

- A. Materials shall be in conformance with the Standard Specifications Section 82, "Signs and Markers," the Caltrans Standard Sign Specifications and the CAMUTCD, except that all materials will be supplied by the Contractor.

- B. All signs shall be fabricated from high tensile alloy aluminum with reflective smooth finish. Sign panels shall be a minimum of 0.080 inch thick, cut to size and shape with a tolerance of 1/32 inch. Panels shall be flat and free of buckles, warps, dents, burrs and any other defects resulting from fabrication.
- C. All signs are to be of Diamond grade reflectivity.
- D. Sizes for signs in the street, or signs that serve both bicyclists and vehicles, shall be as required for “Conventional Roads” as defined in Part 2, “Signs,” of the CAMUTCD.

#### **TRAFFIC SIGN FASTENERS AND POSTS**

- A. Posts for signs shall be 2” Galvanized pipe. Posts shall be set in concrete, 8” diameter, 24” deep.
- B. Fasteners for Galvanized posts shall be per State Standard Specifications and drawings details.

#### **EXECUTION**

##### **SIGN REMOVAL & REPLACEMENT**

The Contractor shall remove the signs to be relocated from the existing sign posts.

##### **NEW SIGN**

All sign types, locations and offsets shall be approved by the City Engineer prior to installation and shall be installed as shown on the Drawings, unless otherwise detailed or directed by the City Engineer. Construction and panel installation shall be per Section 82-2.03, “Construction,” and Section 82-3, “Roadside Signs,” of the Standard Specifications. Sign panels shall be level and sign posts shall be plumb.

Signs shall be placed to have a minimum height of 7-ft as measured from the finished ground elevation to the bottom invert of the sign.

##### **MEASUREMENT AND PAYMENT**

Contract unit prices paid per each for signs and posts shall include full compensation for furnishing all labor, materials, tools, equipment, and all incidentals necessary, and for doing all the work involved, including but not limited to, installation of new posts for new signs, and installation of new signs, as shown on plans, as specified in the standard specifications and as directed by the engineer, and no additional compensation will be allowed therefore.

Contract unit prices paid per each for relocation of signs, shall include full compensation for furnishing all labor, materials, tools, equipment, and all incidentals necessary, and for doing all the work involved, including but not limited to, removing indicated existing signs, installing new sign posts, and reinstalling existing sign panels on new posts as shown on plans, as specified in the



standard specifications and as directed by the engineer, and no additional compensation will be allowed therefore.

**RESET SIGN AND POLE (EA)**

**BID ITEM #27**