



**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: September 17, 2018
Reviewed by: NA

SUBJECT: Award of Contract No. C18-39 – 2018 San Pablo Tree Pruning

REPORT BY: John Hawkridge Urban Forester
Mark Hurley, Public Works Director

SUMMARY

This issue before Council is to award Contract No. C18-39 in the amount of \$39,100 to Professional Tree Care Company. The scope of the contract includes maintenance pruning of 80 trees along San Pablo Avenue to reduce the risk of limb failure, gain proper clearances for vehicles and pedestrians, and improve visibility of traffic signs and signals. This work is being funded from the FY18/19 Public Works Department's operating budget.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2018-117 authorizing the City Manager to award Contract No C18-39 to Professional Tree Care Company in the not-to-exceed amount of \$39,100 to perform maintenance pruning of 80 trees along San Pablo Avenue using previously appropriated funds within the FY18/19 Public Works Department operating budget.

BACKGROUND

There are 119 trees along San Pablo Avenue including 70 American Sweetgum (*Liquidambar styraciflua*) which is a species known to be prone to limb failure. These trees need maintenance pruning to reduce the risk of limb failure, gain proper clearances for vehicles, and pedestrians, and improve visibility of traffic signs and signals. Note that there have been at least 4 large limb failures along San Pablo Avenue over the past 2 years.

Of the 119 trees, 39 can be maintained by the City's Urban Forester. The remaining 80 need to be maintained by a contractor due to their size. Maintaining these trees requires a lift and professionally produced pedestrian and traffic control plan that needs Caltrans approval for working on San Pablo Avenue.

DISCUSSION

Staff solicited bids from six tree contractors to perform maintenance pruning of the 80 trees along San Pablo Avenue. The City received two bids for the work, one in the amount of \$39,100 and one in the amount of \$29,100. The other four contractors either declined to bid or were nonresponsive. Staff rejected the low bid from Cleary Brothers due to their recent performance on other City projects.

Staff recommends awarding this contract to Professional Tree Care Company based on their skill set, quality of work, pricing and availability (i.e. has available equipment and staffing necessary to complete the work). Professional Tree Care is also a licensed traffic control contractor and is frequently contracted by CalTrans to do tree work along their corridors. Working knowledge of CalTrans traffic control and lane closure procedures will assure safe and expeditious completion of the work along this busy corridor.

SUSTAINABILITY IMPACT

The American Sweetgum (*Liquidambar styraciflua*) is a problematic tree, once commonly planted by the City of Albany and surrounding communities as a street tree. Their roots are aggressive; decades after being planted, these trees are breaking sidewalks and roadways around town. They also produce spiky brown seed-balls that are seen as a nuisance. These trees are no longer allowed to be planted as street trees in Albany. More recently we have seen many limb failures from these trees partly due to excess growth caused by drought followed by good rainy seasons. It is unknown when past maintenance has occurred on these trees.

Future treatment of these trees will require monitoring and weight-reduction pruning as necessary in order to minimize large limb failure. As these trees decline to point of no longer being sustainable, they should be removed, on a case by case basis, and replaced with a more appropriate species. The replacement species as per the San Pablo Avenue Streetscape Master Plan (adopted by City Council February 2001, page 3) is the Red Oak (*Quercus rubra*), several of which are already planted including 3 planted this year.

FINANCIAL IMPACT

The proposed budget for this project is for a not to exceed contract in the amount of \$39,100. This work is programmed within the Public Works Department's FY18/19 operating budget.

Attachments

1. Resolution No. 2018-117
2. Contract C18-39 with attachments

CITY OF ALBANY

**CONTRACT DOCUMENTS
FOR MINOR PUBLIC WORKS PROJECTS**
[For contracts of \$25,000 - \$100,000]

2018 San Pablo Avenue Tree Pruning

City Contract No. C18-39

For questions or additional information:

John Hawkrige
jhawkrige@albanyca.org

Contents:

**Request for Quotes
Price Quote
Subcontractor List
Contract
Payment Bond
Performance Bond
General Conditions
Special Conditions**

Approved by: Mark Hurley, Public Works Director /City Engineer

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REQUEST FOR QUOTES

The City of Albany ("City") is a charter city and is not bound by the provisions of the California Public Contract Code except as expressly provided in the Albany City Charter and Municipal Code, available online at <http://www.albanyca.org/index.aspx?page=644>.

1. **Request for Quotes.** Pursuant to Section 13-5 of Chapter XIII of the Albany Municipal Code, a Minor Public Works Contract (for \$100,000 or less) may be awarded without formal, noticed bidding, based on written price quotations. The purpose of this *Request for Quotes* is to provide instructions and information to contractors who are requested to submit a quote to serve as the general contractor for the Project described below.
2. **Project Information.** The Project is located in the City of Albany along San Pablo Avenue, a CalTrans corridor, on both east and west sides, and is described as follows:

Maintenance pruning of 42 trees on the east side and 38 trees on the west side of San Pablo Avenue, for a total of 80 trees to be pruned. Work is to be done in accordance with accepted industry standards: Tree Work Standards ANSI Z133.1 and ANSI A300 and ISA Best Management Practices – Tree Pruning.

The planned timeframe for start and completion of construction of the Project is **Apr. 30, 2018 to May 31, 2018.**

3. **Price Quote.** The price quote must be submitted no later than **5:00 p.m. on Mar. 14, 2018**, using the *Price Quote* form provided with the Contract Documents. The City reserves the right to extend the time for submission of price quotes and to issue addenda amending the Contract Documents prior to the time for submission of *Price Quotes*. The completed and executed *Price Quote* should be submitted as a PDF, along with the completed *Bid Schedule* form and *Subcontractor List* form (if required) to jhawkridge@albanyca.org.
4. **Contract Documents.** The technical specifications and contract documents for the Project ("Contract Documents") are available for a nonrefundable payment of \$ N/A per set from BPXpress Reprographics in Richmond, California, by logging on to www.blueprintexpress.com/albany, by email to Richmond@blueprintexpress.com, or by calling 510-559-8299. Interested contractors must purchase a full set of the Contract Documents from BPXpress Reprographics, and must be added to the planholder list to receive addenda notifications.
5. **License and Registration Requirements.** This Project requires a valid California contractor's license for the following classification(s): **D-49 Tree Service Contractor**. City will not accept a *Price Quote* from or enter into the Contract with a contractor without proof that the contractor and its subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

6. **Prevailing Wage Requirements.** This Project is subject to the state prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. These prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. The Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, under Labor Code Section 1771.4.
7. **Performance and Payment Bonds.** The selected contractor will be required to provide performance and payment bonds for 100% of the Contract Price using the forms provided with the Contract Documents.
8. **Substitution of Securities.** Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code Section 22300.
9. **Subcontractors.** If any subcontractors will be used to perform the Work, submit the name, location of the place of business, and California contractor license number, and DIR registration number of each subcontractor who will perform work or service or fabricate or install work for the prime contractor in excess of one-half of 1% of the bid price, using the *Subcontractor List* form included with the Contract Documents. If applicable, submit the completed *Subcontractor List* form as a PDF file with the *Price Quote*. Any subcontractor who is ineligible to perform work on a public works project under Labor Code Sections 1777.1 or 1777.7 is prohibited from performing work on this Project.
10. **Pre-Bid Conference/Site Visit.** A pre-bid conference was not held. The pre-bid conference is not mandatory.
11. **Requests for Information.** Questions regarding the Project, submission of a price quote or any of the Contract Documents must be submitted in writing to **John Hawkrige** at jhawkrige@albanyca.org.
12. **Examination of Contract Documents and Project Site.** Each contractor is solely responsible for diligent and thorough review of the Contract Documents (as defined in the *General Conditions*), examination of Project site, and reasonable and prudent inquiry concerning known and potential site conditions prior to submitting a price quote. Contractors are responsible for reporting any errors or omissions in the Contract Documents to the City prior to submitting a Price quote, subject to the limitations of Public Contract Code Section 1104. The City expressly disclaims responsibility for assumptions the contractor might draw from the presence or absence of information provided by the City.
13. **Brand Designations and "Or Equal" Substitutions.** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and contractors

may request use of any equal material, product, thing, or service. Any request for substitution made before the Contract is awarded must be submitted to the City Engineer at least ten days before the opening of bids so that all interested contractors may be notified of any approved alternative. All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. The City Engineer has the sole and final discretion to determine whether the substitute offered is an "equal" item. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code Section 3400(c).

14. **Reservation of Rights.** The City reserves the right, acting in its sole discretion, to waive immaterial irregularities in a *Price Quote*, the right to accept or reject any and all quotes, or to abandon the Project entirely.

END OF REQUEST FOR QUOTES

Optional Provisions:

- ___ **Bid Schedule.** Each contractor must fully complete the *Bid Schedule* form accompanying the *Price Quote* form with unit prices as instructed on the *Bid Schedule* form, and must submit the completed *Bid Schedule* with its *Price Quote*. The quantities shown on the *Bid Schedule* are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the *Bid Schedule*, with no allowance for anticipated profit for quantities that are deleted or decreased.

PRICE QUOTE
Albany-Hill-Eucalyptus-Removal-Project

The Professional Tree Care Company ("Contractor") hereby submits this price quote to the City of Albany ("City") for the City's 2018 San Pablo Avenue Tree Pruning Project ("Project") in response to the *Request for Quotes* and in accordance with the Contract Documents.

1. **Offered Price.** Contractor proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, for the following price ("Offered Price"):
\$ 39,900

2. **Addenda.** Contractor acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#03	_____ N/A _____
#02	_____	#04	_____ N/A _____

3. **Contractor's Warranties.** By signing and submitting this *Price Quote*, Contractor warrants the following:

3.1 **Examination of Contract Documents.** Contractor has thoroughly examined the Contract Documents, and represents that, to the best of Contractor's knowledge there are no errors, omissions, or discrepancies in the Contract Documents subject to the limitations of Public Contract Code Section 1104.

3.2 **Examination of Worksite.** Contractor has had the opportunity to examine the Worksite and local conditions at the Project location.

3.3 **Contractor is Qualified.** Contractor is fully qualified to perform the Work.

3.4 **Responsibility for Price.** Contractor has carefully reviewed this price quote and is solely responsible for any errors or omissions contained in its completed *Price Quote*.

4. **Award of Contract.** By signing and submitting this *Price Quote*, Contractor agrees that if Contractor is awarded the Contract for the Project, that within ten days following issuance of the notice of award to Contractor, Contractor will do all of the following:

4.1 **Execute Contract.** Enter into the Contract with the City for the amount of the Offered Price, by signing and submitting to the City the *Contract* prepared by the City using the form included with the Contract Documents;

4.2 **Submit Required Bonds.** Submit to the City a payment bond and a performance bond, each for 100% of the Offered Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and

4.3 **Insurance Requirements.** Submit to the City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

5. **Authorization and Execution.** The *Price Quote* must be signed by the contractor's authorized representative. A *Price Quote* submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A *Price Quote* submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the *Price Quote*, under California Corporation Code section 313. If a *Price Quote* is signed by someone other than the officer or officers of a corporation or a general partner of a partnership, a Power of Attorney must be submitted with the *Price Quote*.

This *Price Quote* is hereby submitted on April 5, 2016.

S/ 
S/ 

THE PROFESSIONAL TREE CARE CO
Company Name
2828 5TH ST.
Address
Berkeley, CA 94710
City, State, Zip

Charles Stesinger - Bid Coordinator
Name and Title [print]
Brian Penske - President
Name and Title [print]
676952 C21, C27, C31, C61/D49
License # and Classification
510-549-3954
Phone
100000343
DIR Registration #

END OF PRICE QUOTE

BID SCHEDULE

This *Bid Schedule* must be completed and submitted as a PDF with the *Price Quote*. The contractor must provide unit prices for each bid item listed below, based on the specified unit of measure. The unit price for each item must include all of the contractor's costs and markup, including labor, materials, equipment, supplies, insurance, taxes, overhead and profit. In the far-right column, provide the total amount for each item, calculated as the product of the unit price multiplied by the estimated quantity. Enter the sum of all unit total amounts as the total and enter that amount as the Offered Price on the *Price Quote* form. If bid alternates are required, provide a separate total, as indicated, for each separate bid alternate, and complete the *Price Quote* form as indicated.

BID ITEM NO.	ITEM DESCRIPTION	EST. QUANT.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
1	Tree pruning as described in addendum	80	Tree	\$ 480 ⁰⁰	\$ 38,400 ⁰⁰
2	Traffic Control and plan, incl. CalTrans encroachment permit	1	project	\$ 700 ⁰⁰	\$ 700 ⁰⁰
3	Payment & Corp. Bond	1	EA	\$ 800	\$ 800 ⁰⁰
4				\$	\$
5				\$	\$
6				\$	\$
7				\$	\$
8				\$	\$
9				\$	\$
10				\$	\$
CONTRACTOR'S NAME: Professional Tree Care Company				TOTAL (Offered Price) \$ 39,900 ⁰⁰	

END OF BID SCHEDULE

CONTRACT

This public works contract ("*Contract*") is entered into by and between the City of Albany ("*City*") and **Professional Tree Care** ("*Contractor*") for work on the **2018 San Pablo Avenue Tree Pruning** ("*Project*").

The parties agree as follows:

1. **Award of Contract.** Bids, Contractor has submitted a *Price Quote* to perform work on the Project, and on _____, 20___, the City authorized award of this *Contract* to Contractor for the amount of Contractor's Offered Price.
2. **Contract Documents.** The Contract Documents incorporated into this *Contract* include and are comprised of all of the following:
 - 2.1 Request for Quotes;
 - 2.2 Addenda, if any;
 - 2.3 Price Quote and attachments thereto;
 - 2.4 Contract;
 - 2.5 Payment and Performance bonds;
 - 2.6 General Conditions;
 - 2.7 Special Conditions;
 - 2.8 Project Drawings and Specifications;
 - 2.9 Change Orders, if any;
 - 2.10 City of Albany Technical Provisions
 - 2.11 City of Albany Standard Details
 - 2.12 Stump Treatment
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, the City will pay Contractor not to exceed Thirty-Nine Thousand and Nine Hundred Dollars (\$39,900) (the "*Contract Price*"), in accordance with the payment provisions in the *General Conditions*.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 30 calendar days from the commencement date given in the Notice to Proceed ("*Contract Time*"). By signing below, Contractor expressly waives any claim for delayed early completion.

6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, the City will assess liquidated damages in the amount of \$ 500.00 for each day of unexcused delay in completion.
7. **Labor Code Compliance.**
- 7.1 **General.** This *Contract* is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
- 7.2 **Prevailing Wages.** This *Contract* is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. City will not accept a *Price Quote* from or enter into the *Contract* with a contractor without proof that the contractor and its subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this *Contract*."
9. **Notice.** Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City of Albany	Contractor
Name	Anne Hsu, City Clerk	
Address	1000 San Pablo Avenue	
City/state/zip	Albany, CA 94706	
Phone	510-528-5710	
Fax	510-528-5797	
Copy to:	Mark Hurley, Dir. Public Works	
Email	mhurley@albanyca.org	

10. General Provisions.

- 10.1 Business License.** The Contractor must obtain a City of Albany business license before performing any Work on the Project. This business license must remain in effect at all times while Work is being performed on the Project.
- 10.2 Assignment and Successors.** Contractor may not assign its rights or obligations under this *Contract*, in part or in whole, without the City's written consent. This *Contract* is binding on Contractor's successors and permitted assigns.
- 10.3 Third Party Beneficiaries.** There are no intended third party beneficiaries to this *Contract* except as expressly provided in the *General Conditions* or *Special Conditions*.
- 10.4 Governing Law and Venue.** This *Contract* will be governed by California law and venue will be in the Superior Court for Alameda County, and no other place.
- 10.5 Amendment.** No amendment or modification of this *Contract* will be binding unless it is in a writing duly authorized and signed by the parties to this *Contract*.
- 10.6 Integration; Severability.** This *Contract* and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between the City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.7 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this *Contract* is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures on following page.]

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

CITY OF ALBANY:

Approved as to form:

s/ _____

s/ _____

Nicole Almaguer, City Manager

Craig Labadie, City Attorney

Date: _____

Date: _____

CONTRACTOR:

THE PROFESSIONAL TREE CARE CO
Company Name

DIR Reg. No: 1000000343

s/ 


s/ _____

Charles Steinger Bid Coordinator
Name/Title [print]

Brian Fenske - President
Name/Title [print]

Date: 4/5/18

Date: 4/5/18

4290
City of Albany Business
License Number

12/31/18
Business License Expiration Date
Seal:

676952
Contractor's Calif. License Number(s)
10/31/19
Expiration Date(s)

END OF CONTRACT

The City of Albany ("City") and The Professional Tree Care Co.
("Contractor") have entered into a contract, dated March 29th, 2018 ("Contract") for
work on the **2018 San Pablo Avenue Tree Pruning Project** ("Project"). The Contract is
incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and Western Surety Company
, its surety ("Surety"), are bound to the City as obligee in
an amount not less than (\$ 39,900.00) ("Bond Sum"), under California Civil Code
Sections 9550, et seq.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay any of the
persons named in California Civil Code Section 9100 amounts due under the
Unemployment Insurance Code with respect to work or labor performed under the
Contract, or for any amounts required to be deducted, withheld, and paid over to the
Employment Development Department from the wages of employees of the Contractor
and its Subcontractors, under California Unemployment Insurance Code Section 13020,
with respect to the work and labor, then Surety will pay for the same.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California
Civil Code Section 9100, so as to give a right of action to those persons or their assigns in
any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond
upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and
equipment furnished for use in the performance of the Work required by the Contract, in
conformance with the time requirements set forth in the Contract and as required by
California law, Surety's obligations under this Bond will be null and void. Otherwise,
Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or
extensions of time for performance of the Work under the Contract. Surety waives the
provisions of Civil Code Sections 2819 and 2845. The City waives requirement of a new
bond for any supplemental contract under Civil Code Section 9550.
6. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and
delivered or transmitted to Surety as follows:

Attn: Western Surety Company
Address: 8880 Cal Center Drive, #410
City/State/Zip: Sacramento, CA 95826
Phone: 209-772-2110
Fax: 209-772-7227
Email: jocelyn@blueprintbonding.com

7. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant
to this Bond will be venued in the Superior Court for Alameda County, and no other place.

Surety will be responsible for the City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

8. **Effective Date; Execution.** This Bond is entered into and is effective on April 4th, 2018. Two identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY:

Western Surety Company

s/ 

Name: Jocelyn Y. Quirt,

Title: Attorney-in-Fact

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

The Professional Tree Care Co.

s/ 

Name: Charles Stesinger

Title: Bid Coordinator

APPROVED BY CITY OF ALBANY:

s/ _____

Name: Nicole Almaguer

Title: City Manager

END OF PAYMENT BOND

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara)

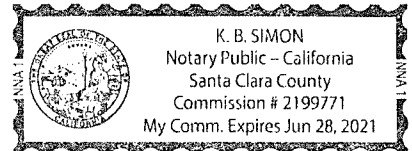
On April 4, 2018 before me, K. B. Simon, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature *K B Simon* (Seal)



Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Jocelyn Y Quirt, Individually

of Valley Springs, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 17th day of June, 2015.



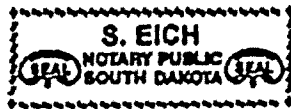
WESTERN SURETY COMPANY

Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 17th day of June, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
February 12, 2021



S. Eich
S. Eich, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 4th day of April, 2018.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

The City of Albany ("City") and The Professional Tree Care Co.
("Contractor") have entered into a contract, dated March 29th, 2018 ("Contract") for
work on the Albany Hill Eucalyptus Tree Removal Project ("Project"). The Contract is
incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, the Contractor as Principal and Western Surety Company, its surety ("Surety"), are bound to the City as obligee for an amount not less than Dollars (\$ 39,900.00) (the "Bond Sum"). By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, to the provisions of this Bond.
2. **Surety's Obligations; Waiver.** If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract. Surety's obligations under this Bond will become null and void upon recordation of the notice of completion, provided Contractor has timely provided a warranty bond as required under the Contract. Otherwise Surety's obligations will remain in full force and effect until expiration of the one year warranty period under the Contract. Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845.
3. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by the City to the Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which the City is entitled under the terms of the Contract.
4. **Contractor Default.** Upon written notification from the City that Contractor is in default under Article 13 of the *General Conditions*, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 4.1 Arrange for completion of the Work under the Contract by Contractor, with the City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 4.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to the City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense, or
 - 4.3 Waive its right to complete the Work under the Contract and reimburse the City the amount of the City's costs to have the remaining Work completed.

5. **Surety Default.** If Surety defaults on its obligations under the Bond, the City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
6. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: Western Surety Company
Address: 8880 Cal Center Drive, #410
City/State/Zip: Sacramento, CA 95826
Phone: 209-772-2110
Fax: 209-772-7227
Email: jocelyn@blueprintbonding.com

7. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court for Alameda County, and no other place. Surety will be responsible for the City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
8. **Effective Date; Execution.** This Bond is entered into and effective on April 4th, 2018. Two identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY:

Western Surety Company

s/ 

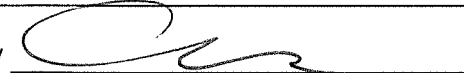
Name: Jocelyn Y. Quirt,

Title: Attorney-in-Fact

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

The Professional Tree Care Co.

s/ 

Name: Citrales Slesinger

Title: Bid Coordinator

END OF PERFORMANCE BOND

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara)

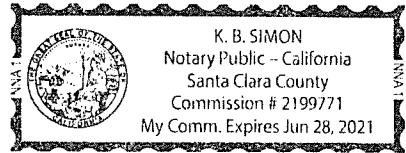
On April 4, 2018 before me, K. B. Simon, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Jocelyn Y Quirt, Individually

of Valley Springs, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 17th day of June, 2015.



WESTERN SURETY COMPANY

Paul T. Bruflat

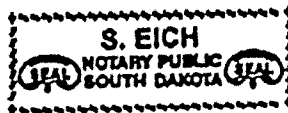
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 17th day of June, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

February 12, 2021



S. Eich

S. Eich, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 4th day of April, 2018.



WESTERN SURETY COMPANY

L. Nelson

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

GENERAL CONDITIONS

Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” “including,” “install,” “work day” or “working day.”

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

As-Planned Schedule means the baseline schedule approved by the City as defined in Section 5.2(A) of these General Conditions.

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

Caltrans Standard Plans means the most current version at bid time of the Standard Plans of the California Department of Transportation.

Caltrans Standard Specifications means the most current version at bid time of the Standard Specifications of the California Department of Transportation, subject to the terms and limitations in Section 3.3, Caltrans Standard Specifications.

City means the City of Albany, acting through its governing body, officers, employees, and authorized representatives.

City Engineer means the City Engineer and Director of Public Works for the City of Albany acting directly or through duly authorized agents, which may include employees of the City or outside consultants.

City Standard Details means the Standard Details of the City of Albany, current edition.

City Standard Specifications means the Standard Specifications for the City of Albany, current edition.

City Technical Provisions means the City of Albany’s Technical Provisions found within the City Standard Specifications.

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

Contract means the signed agreement between the City and Contractor.

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

Contract Time means the number of calendar days for performance of the Work, as set forth in the Contract and as amended by Change Order.

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

Day means a calendar day unless otherwise specified.

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

Drawings means the City-provided plans and graphical depictions of the Project requirements, and does not include Shop Drawings.

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

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to 125% of the amount of any unreleased stop notice, amounts subject to setoff, up to 150% of any unresolved third-party claim for which Contractor is required to indemnify the City, and up to 150% of any amount in dispute as authorized by Public Contract Code Section 7107.

Furnish means to purchase and deliver to the Worksite designated for installation.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

"Including" means "including, but not limited to," unless the context requires otherwise.

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

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

Parking Restriction Plan means the portion of Contractor's Traffic Control Plan that describes and depicts how Contractor will manage parking both on and adjacent to the Project site.

Project means the public works project referenced in the Contract.

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

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

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

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

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context.

Technical Specifications has the same meaning as Specifications.

Traffic Control Plan means Contractor's plan that describes and depicts how traffic control will be achieved for the duration of the Project, including all lane and street closures and the Parking Restriction Plan.

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

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by the City.

Worksite means the place or places where the Work is performed.

Article 2

Roles and Responsibilities

- 2.1 Design Professional.** Design Professional is responsible for the overall design of the Project, and is authorized to act on the City's behalf to ensure performance of the Work

in compliance with the Contract Documents. The Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, equipment and services necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of the City.

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

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

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to the City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

(F) **Responsible Party.** Contractor is solely responsible to the City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by the City, Design Professional, or the Inspector to be deficient or defective in workmanship, materials, and equipment.

(H) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.
- (2) Contractor must continue to maintain its Project records in an organized manner for a period of four years after the City's acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, the City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. The City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and the City, but the City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

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

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs the City incurs in responding to the request, including legal fees and costs to conduct a hearing.

2.4 Coordination of Work. The City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify the City and Design Professional against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Project Manager for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by the City. All submittals, including requests for information (RFIs) are subject to the provisions of this Section.

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

(B) **Time and Manner of Submission.**

(1) **Time.** Contractor must deliver all submittals required by the Contract Documents in accordance with the current approved schedule for the Work and within the applicable time specified elsewhere in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(2) **Manner.** Contractor must prepare and submit any information required by the Contract documents as follows:

(a) One reproducible original of all submitted information. When individual sheets in the submittal exceed 8-1/2 inches x 11 inches, a sepia will be submitted.

(b) Four copies of all the submitted information.

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

(C) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(D) **Effect of Review and Approval.** Review and approval of a submittal by City or the Design Professional will not relieve Contractor from complying with the requirements of the Contract Documents.

(E) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Design Professional or Inspector.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Design Professional and Project Manager and request clarification of such, by submitting a written request for information (RFI) in the manner specified by the City. The Design Professional's clarifications or interpretations will be final and binding.

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

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

(E) **Measurements.** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

3.2 **Order of Precedence.** Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the *Special Conditions*, in case of any conflict or inconsistency among the Contract Documents, or between or among the one or more of the Contract Documents and other documents, the following order of precedence will apply, beginning from highest to lowest:

- (A) Change Orders;
- (B) Addenda;

- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Permits from other agencies (if required)
- (G) Special Conditions;
- (H) General Conditions;
- (J) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Price Quote and attachments;
- (L) Request for Quotes;
- (M) City of Albany Technical Provisions
- (N) City of Albany Standard Details; and
- (O) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation (“Caltrans”), including “Standard Specifications,” “Caltrans Specifications,” “State Specifications,” or “CSS,” means the most current edition of Caltrans’ Standard Specifications (“Standard Specifications”), and the most current amendments on the date that Contractor’s bid was submitted for this Project. The following provisions apply to use of or reference to the Standard Specifications:

(A) **Limitations.** None of the “General Provisions” of the Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

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

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

(1) Any reference to the “Engineer” is deemed to mean the City Engineer.

(2) Any reference to the “Special Provisions” is deemed to mean the *Special Conditions*.

(3) Any reference to the “State” is deemed to mean the City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the

Contract Documents. However, Contractor is advised that the City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided For Reference Only.

Article 4 Bonds, Indemnity, and Insurance

- 4.1 Payment and Performance Bonds.** Within ten days following issuance of the notice of award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, using the bond forms included with the Contract Documents. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond, becomes insolvent, or at any time becomes unsatisfactory to the City, within 20 days following written notice from the City, Contractor must substitute a surety acceptable to the City. If Contractor fails to substitute an acceptable surety within the specified time, the City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to the City's satisfaction, or terminate the Contract for default. Any changes in the Work or extensions of time made under the Contract does not release Contractor or Surety from their obligations.
- 4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless the City, its agents and consultants, Design Professional, and Project Manager (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of the Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. The City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.
- 4.3 Insurance.** No later than ten days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If

Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, the City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default.

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

(1) *Commercial General Liability Insurance ("CGL"):* The CGL policy must be issued on an occurrence basis, written on a comprehensive general liability form, and will include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work, including contractor's protected coverage, blanket contractual, completed operations, vehicle coverage and employer's non-ownership liability coverage, with limits of at least \$2,000,000.00 per occurrence. The CGL policy must name the City as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and must protect the City, its officers, employees, and agents against any and all liability for personal injury, death, or property damage or destruction arising directly or indirectly in the performance of the Contract. The CGL coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth herein.

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

(3) *Workers' Compensation Insurance and Employer's Liability:* The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act, with of at least \$1,000,000.00. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

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

(D) **Required Endorsements.** The CGL Policy and the Builder's Risk Policy must include the following specific endorsements:

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

(2) The insurance provided is primary and no insurance held or owned by the City may be called upon to contribute to a loss.

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

(E) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

Article 5 Contract Time

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

(A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed or within ten calendar days if no commencement date is specified, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

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

5.2 Schedule Requirements. All schedules must be prepared using standard scheduling software acceptable to City, and must provide schedules in electronic and paper form as requested. Additional, more detailed schedule requirements may be included in the Special Conditions

(A) **As-Planned (Baseline) Schedule.** Within 15 calendar days following issuance of the notice of award (or as otherwise specified in the *Special Conditions*), Contractor must submit to the City for review and approval an As-Planned (baseline) Schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The As-Planned Schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the As-Planned Schedule must be dated, provided in the format specified in the Contract Documents or as required by the Design Professional, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

(B) **Progress Schedules.** Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by City, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the As-Planned schedule, and must identify any actual or potential impacts to the critical path.

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

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

(E) **Posting.** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in its on-site office.

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

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

5.3 Delay and Extensions of Contract Time.

(A) **Excusable Delay.** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, failure of the City to acquire or clear rights of way, or unusually severe weather.

(B) **Non-Excusable Delay.** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;
- (4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or
- (5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

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

- (1) **Required Contents.** The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the

cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) *Delay Days and Costs.* The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

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

(4) *Burden of Proof.* Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final Completion, and 4) that any delay costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs are limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

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

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of the City's right to assess liquidated damages for unexcused delay.

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

5.4 **Liquidated Damages.** It is expressly understood that if Final Completion is not achieved within the Contract Time, the City will suffer damages which are difficult to determine and accurately specify. Pursuant to Public Contract Code Section 7203, if Contractor fails to achieve Final Completion within the Contract Time, the City will charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

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

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

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

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

Article 6 Contract Modification

6.1 **Changes in Work.** The City reserves the right to make changes in the Work without invalidating the Contract. The City may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and the City have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) **City-Directed Change.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to an City-directed change, Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) **Contractor's Obligations.** In the event that the City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

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

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

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

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to the Project Manager within ten calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

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

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

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

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

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein are deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq."

(F) **Effective.** A Change Order is not effective until it is approved by the City Council.

(G) **Value Engineering Change Orders.** In the event that the City approves a Change Order requested by Contractor that reduces the Contract Price, Contractor will share in the net savings in construction costs as determined by the City under Public Contract Code Section 7100.

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices or a schedule of values will apply first if unit pricing or a schedule of values has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work.

(B) **Lump Sum.** A mutually agreed upon lump sum.

(C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

(1) All direct labor costs plus 15% for overhead and profit;

(2) All direct material costs, including sales tax, plus 15% for overhead and profit;

(3) All direct plant and equipment rental costs, plus 15% for overhead and profit;

(4) All direct subcontract costs plus 10% for overhead and profit; and

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

6.4 Unilateral Change Order. If the City disagrees with the amount of compensation or extension of time that Contractor has requested, the City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

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

Article 7 General Construction Provisions

7.1 Permits and Taxes.

(A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses, including City of Albany Business License(s), required to perform the Work, unless otherwise indicated in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. Contractor must provide the City with copies of all notices, permits, licenses, and renewals required for the Work.

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

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

(A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

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

(C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or *Special Conditions*.

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

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by the City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to the City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for the City. Unless otherwise directed by the Project Manager, Contractor must preserve existing monuments, bench marks, reference points, and stakes.

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify City, and

must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the City. If City's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

(C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to the City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

(D) **Tree and Plant Protection.** No trees or cultured plants will be removed or damaged unless Contractor obtains written permission of Engineer or property owner. Whenever practicable, Contractor must tunnel beneath trees when on or near the line of trench. Hand excavation must be used as necessary to prevent injury to trees and other plants. All lawn areas that have been disturbed by Contractor's construction activities or by parking of equipment must be restored using methods approved by the Engineer.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with the City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until the City accepts the Project.

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

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity

obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **“Or Equal.”** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to City for approval 14 days after the date of award of the Contract, unless otherwise specified in the *Special Conditions*, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an “equal” item must be submitted with the written request for substitution. Contractor’s failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

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

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

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

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers’ application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

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

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

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

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

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

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

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

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) **General.** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) **Non-Compliance.** If Contractor fails to commence compliance with its cleanup obligations within two business days following written notification from the City or its

Project Manager, the City may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due the Contractor.

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

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

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

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of the City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

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

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

completion of the Work, to the extent such delay was caused by the City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two working days, but not more than 14 calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

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

(1) Material that Contractor believes may be a 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 the provisions of existing law;

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

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

(B) **City Investigation.** The City will promptly investigate the conditions and if the City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, the City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between the City and the Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and the City.

7.15 Trenching of Five Feet or More. As required by Labor Code Section 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to the City or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the

plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

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

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

7.18 Historic or Archeological Items.

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

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

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

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

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in the City's principal administrative offices, and the Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. The Contractor must timely and completely submit required reports and monitoring

information required by the conditions of the Stormwater Permit, the Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Vehicle Code and Traffic. Vehicles and equipment traveling to and from the Project Site over or along a public way must conform to the applicable provisions of the California Vehicle Code. Unless otherwise provided in the Special Conditions, one lane in each direction for public traffic must be permitted to pass through the work with as little inconvenience as possible. Contractor must submit a proposed Traffic Control Plan, as described in Section 7.20(A) below, to the City within 15 days following issuance of the Notice of Award or as otherwise specified in the Special Conditions. Contractor must submit any changes to the Traffic Control Plan with Progress Schedules as necessary, and must comply with Sections 6.11 (“Public Convenience and Safety”) and 6.13 (“Traffic Control”) of the General Provisions of the City’s Standard Specifications.

(A) **Traffic Control Plan Requirements.** Prior to any Pre-Construction Conference, if required by the Special Conditions, or prior to starting Work, Contractor must submit, for Engineer’s review and acceptance, a Traffic Control Plan describing and depicting how traffic control will be achieved for the duration of the Project, including all lane and street closures. The Traffic Control Plan must be designed to ensure public safety at all times while the Project is under construction. The Traffic Control Plan must be signed and stamped by Contractor’s licensed traffic engineer and must include the following information:

- (1) The route or routes that construction vehicles will be using for ingress and egress to the Project site during each phase of construction;
- (2) A Parking Restriction Plan describing and depicting how parking will be managed both on and adjacent to the Project site;
- (3) Contractor’s plan for addressing peak hour traffic; and
- (4) Contractor’s plan for maintaining two-way traffic at all times.

(B) **Compliance.** At all times during construction, Contractor must comply with the following:

- (1) The full width of the road, bicycle lane, and sidewalk must be open for public traffic during times when construction operations are not actively in progress;
- (2) Bus stop locations meeting ADA standards must be maintained or provided;
- (3) The traffic signals at Pierce Street and Buchanan Street, and at San Pablo Avenue and Buchanan Street, must remain functional at all times except as specifically allowed by written approval from the Engineer, and Contractor must notify the Engineer two days in advance of any Work that might affect signal

operation at these two locations including, but not limited to, lane closures, redirection of approach traffic, damage to loops, and relocation of signal equipment;

(4) Contractor must furnish, install, maintain, and remove all signs, temporary object markers, barriers, and portable delineators required for the direction of vehicular, bicycle, and pedestrian public traffic through or around the Project site as provided by the Traffic Control Plan; and

(5) Flaggers must be provided as necessary for the safety of pedestrians, cyclists, and vehicular traffic, and to provide access to property adjacent to the Work.

(C) **Notice to Third Parties.** Contractor must provide the following notice:

(1) Contractor must post "No Parking, Tow-Away" signs on barricades along the roadway at least 48 hours prior to Work in that area;

(2) Before obstructing any private driveway entrance with equipment or other barriers, Contractor must notify owners at least 48 hours in advance and provide access for pedestrian traffic to and from the street;

(3) Contractor must coordinate the Traffic Control Plan with other contractors and utility companies working in adjacent areas so as to avoid delays and conflicts;

(4) Contractor must keep the City Police Department and City Fire Department informed of obstructions to either public or private roads caused by construction;

(5) Contractor must coordinate with AC Transit (510-891-4777) regarding lane closures, road closures, obstruction, and any other work that may affect bus stops and bus routes.

(D) **Contractor's Vehicles.** Contractor and its employees and subcontractors must not drive vehicles in a manner that would compromise the integrity of the pavement. Failure of base or asphalt caused by construction traffic must be removed and replaced by the Contractor at Contractor's sole cost and expense.

(E) **Responsibility and Remedies.** Contractor must immediately repair or replace any component of the Traffic Control Plan that is displaced or ceases to function as specified. Preparation and implementation of the Traffic Control Plan is part of the Work and Contractor may not request additional compensation. If Contractor fails to provide all the materials, labor and equipment necessary to implement the Traffic Control Plan, the Engineer may procure the items and labor necessary to implement the Traffic Control Plan at Contractor's sole cost and expense.

7.21 Weight Limitation. Unless expressly permitted in the *Special Conditions*, construction equipment or vehicles of any kind must not exceed the maximum weight, size, and load

limitations set forth in the California Vehicle Code and Albany Municipal Code unless approved by the Engineer in writing. Contractor must repair any damage caused by failure to abide by this section.

Article 8 Payment

- 8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.
- 8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the *Special Conditions* or Specifications, Contractor will submit to the City for approval, a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.
- (A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by the Contractor's schedule of values and any other substantiating data required by the Contract Documents.
- (B) **Payment of Undisputed Amounts.** The City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. The City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.
- 8.3 Adjustment of Payment Application.** The City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.
- (A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;
- (B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;
- (C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;

- (D) Failure to timely correct rejected, nonconforming, or defective Work;
- (E) Unexcused delay in performance of the Work;
- (F) Any unreleased stop notice, retained as 125% of the amount claimed;
- (G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;
- (H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;
- (I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;
- (J) Contractor's payroll records are delinquent or inadequate; and
- (K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

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

8.5 Retention. The City will retain five percent of the amount due on each progress payment as retention to ensure full and satisfactory performance of the Work.

(A) ***Substitution of Securities.*** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by the City. Any escrow agreement entered into pursuant to this provision will fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by the City's legal counsel.

(B) ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by the City Council or authorized designee, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

8.6 Setoff. The City is entitled to set off any amounts due from Contractor against any payments due to Contractor. The City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

8.7 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in

accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

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

(B) **Joint Checks.** The City reserves the right to issue joint checks made payable to the Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between the City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.8 Final Payment. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that the City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to the City exceeds the amount of Final Payment, the City retains the right to recover the balance from Contractor or its sureties.

8.9 Release of Claims. The City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing the City with a written release of all claims against the City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.

8.10 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to the City free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) **Eight Hour Day.** Under Labor Code Section 1810, eight hours of labor constitute a legal day's work under this Contract.

(B) **Penalty.** Under Labor Code Section 1813, Contractor will forfeit to the City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.

(C) **Apprentices.** If the Offered Price in Contractor's *Price Quote* is for \$30,000 or more, Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.

(D) **Notices.** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.

9.3 **Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code Section 1720 or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.

(A) **Penalties.** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to the City as a penalty up to \$200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

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

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

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

- (1) The information contained in the payroll record is true and correct.
- (2) The Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

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

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

9.5 Labor Compliance. Under Labor Code Section 1771.4, this Contract is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Article 10 Safety Provisions

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

(A) **Reporting Requirements.** Contractor must immediately provide a written report to the City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to the City.

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

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

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

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

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS must be accessible and available to Contractor's employees, Subcontractors, the City, and the City's representatives.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

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

10.4 Explosives. All persons engaged in receiving, storing, using, handling, or transporting any explosives must obtain a permit from the Fire Department, and all work will be governed by the Health & Safety Code and any amendments or existing articles of the State of California Construction Safety Orders. Any use of explosives must be approved by the City in writing.

10.5 Obstruction of Fire Hydrants. No material, vehicle, or other obstruction will be placed within 15 feet of fire hydrants, which must be at all times readily accessible to the Fire Department.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to the City requesting final inspection. Based on this inspection, the Project Manager or Design Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not relieve the Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include the City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to the City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by the City, the City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, the City may elect to accept the Project and record the notice of completion, and withhold up to 150% of the City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At the City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

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

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

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

(E) **Contractor's Obligations.** Upon written notice from the City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

(F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten days following notice by the City, or sooner, if required by the circumstances, Contractor expressly agrees that the City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse the City for its direct costs, plus an additional 25% as compensation for the City's administrative costs, within 30 days following the City's submission of a demand for payment pursuant to this provision. If the City is required to initiate legal action to compel Contractor's compliance with this provision, and the City is the prevailing party in such action, Contractor is solely responsible for all of the City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by the City to correct the defective Work.

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

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

(B) **City's Responsibility.** The City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the

Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

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

Article 12 Dispute Resolution

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

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to the City in accordance with the requirements of the Contract Documents, and which has been rejected by the City, in whole or in part.

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

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code section 9204 and sections 20104, et seq.

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

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

(A) **Substantiation.** The Claim must be submitted to the City in writing, clearly identified as a "Claim" submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that

was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

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

(1) General introduction, specifically identifying the submission as a "Claim" submitted under this Article 12.

(2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.

(3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:

(a) The background of the issue, including references to relevant provisions of the Contract Documents;

(b) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;

(c) A chronology of relevant events;

(d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and

(e) Use of a separate page for each issue.

(4) Summary of issues and damages.

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

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) **Submission Deadlines.**

(1) A Claim must be submitted within 15 days following the date that the City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.

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

(3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.8, above.

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

12.3 City's Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and Contractor. However, the City may first request, in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that the City may have against Contractor. If Contractor fails to submit the additional documentation to the City within 15 days of receipt of the City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of the City and Contractor.

(B) **City's Response.** The City's written response to the Claim, as further documented, will be submitted to Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

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

12.4 Meet and Confer. If Contractor disputes the City's written response, or the City fails to respond within the specified time, Contractor must notify the City in writing, either within 15 days of receipt of the City's response, or within 15 days of the City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute the City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

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

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

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

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

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within 60 days following conclusion of the meet and confer process, with a mediator that parties mutually agreed upon. The mediation itself may take place more than 60 days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) **Government Code Claims.**

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time the Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

- 12.8 Damages.** Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.
- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by the City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to the City, if Contractor fails to perform or correct work in accordance with the Contract Documents, the City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to the City's satisfaction.
- (A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- (B) ***No Duty to Suspend.*** The City's right to suspend the Work will not give rise to a duty to suspend the Work, and the City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.
- 13.2 Suspension for Convenience.** The City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for the City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by the City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by the City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.
- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if

Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon the City's determination that Contractor is in default, the City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to the City's satisfaction, the City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the *Performance Bond*, within seven calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and the City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that the City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by the City to complete the Work following termination. In addition, the City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. The City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with the City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

(A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;

(B) **Demobilization.** Actual and substantiated demobilization costs; and

(C) **Markup.** Five percent of the total value of the Work performed as of the date of notice of termination or five percent of the value of the Work yet to be completed, whichever is less.

13.5 Provisions Remaining in Effect. Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14 Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

14.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.

14.3 Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

14.5 Statutory and Regulatory References. With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

___ **Project Schedules.** The following provisions apply to all schedules and schedule analysis required for the Project.

___**.1 Scheduling Software Requirements.** All schedules must be prepared using current industry standard scheduling software approved by City. City uses the most current version of Microsoft Project. If Contractor wishes to use a scheduling program other than Microsoft Project, Contractor must provide a licensed copy of its scheduling software and software support to City at no extra cost.

___**.2 General Scheduling Requirements.** All schedules must be prepared using the critical path method ("CPM"), and using the precedence diagramming method to prepare the CPM network schedule as further detailed below.

(A) **Sequence of Activities.** Each schedule must be based on required sequence and interdependence of activities, and must include the work of all Subcontractors. The schedule durations must be shown in units of whole work days and must account for all non-working days, including, but not limited to, weekends and holidays.

(B) **Predecessor and Successor Activities Required.** All activities must have both predecessor and successor activities, except the Notice to Proceed, which has no predecessor activity, and Final Completion, which has no successor activity. The schedule must show finish to start logic relationships between activities, and must not use negative lead or lag times.

(C) **Lead Time.** Schedules must include adequate lead time for review and approval of required submittals, including, but not limited to, Shop Drawings and samples (at least 21 days for review unless otherwise specified); fabrication, manufacture or delivery of items or materials that are not readily available; required governmental or regulatory approvals, if any; or special inspections or testing requirements.

(D) **Activity Identification Numbers.** Each activity must be assigned an identification number, and for each activity, the schedules must include the activity description, planned duration, start date, finish date, total float and calendar identification. No activity shall have more than one responsible party and one area.

(E) **Weather.** Each schedule must reflect seasonal weather conditions which are typical in the Project area as determined by reliable records, including monthly rainfall averages for the preceding ten years.

(F) **Interim Milestones.** Each schedule must include interim milestone dates and phases, if required for this Project, and other significant time limitations specified in the Contract Documents.

(G) **Compliance with General Conditions.** Each schedule must be submitted in compliance with the requirements for submittals in Article 2 of the General Conditions, and must also include the Project name, Contract number and Contractor's name on each sheet of the network diagram. The submittal must include table of abbreviations used in the schedule, listed and defined alphabetically.

___3 **Baseline Schedule.** The baseline (As-Planned) schedule must show Contractor's planned approach to accomplishing the Work within the specified Contract Time. It must provide Contractor's best estimate of the time required to complete each activity considering the quantity of work and planned resources for the activity. All dates in the baseline schedule must be calculated from logical relationships and estimated durations. No artificial constraint dates may be used except if specified elsewhere in the Contract Documents. The baseline schedule should show planned durations, but unless otherwise specified, should not include actual start dates, percent complete or actual finish dates.

___4 **Progress Schedules.** Contractor must submit a progress schedule at the end of each month with each application for a progress payment or for Final Payment as required under Article 5 of the *General Conditions*. Each progress schedule must show the dates that activities were actually started and completed, and should indicate the percentage of completion for all activities that have been started but are not yet complete. The progress schedule must also include a realistic three-week look ahead schedule based upon actual progress to date. Each progress schedule must reflect any changes to the Contract Time or any milestone which have been authorized by an executed Change Order. Each monthly progress schedule submittal must include the following:

- (A) One data-storage device containing the schedule data;
- (B) Two sets of originally plotted time-scaled network 30" x 42" diagrams;
- (C) Two copies of a tabular report for each of the following: 1) all activities sorted by area and completion date, 2) all activities sorted by area and responsibility, and 3) all activities sorted by activity identification number and listing predecessors and successors;
- (D) A list of critical activities; and
- (E) Two copies of a narrative report detailing the progress of the Work to date and identifying any potential delays to Final Completion.

___5 **Monthly Schedule Meetings.** Contractor must attend monthly schedule meetings with the City's representative to review progress made to the end date of each progress payment period.

___6 **Time Impact Analysis.** Any request by Contractor for modification of the Contract Time or any delay-related Change Order request or Claim must be supported by a time impact analysis (TIA) submitted in compliance with the following requirements:

(A) **Time.** The TIA must be submitted within the applicable time specified for submission of a request for an extension of time, Change Order Request, or Claim, as applicable. Failure to submit a timely TIA that fully complies with the requirements of this provision operates as a waiver of any right to modification of the Contract Time or Contract Price.

(B) **Dates.** The TIA must reflect the dates in the last schedule to be approved by City prior to the change or delay.

(C) **Affected Activities.** The TIA must include all activities directly affected by the proposed change or claimed delay, and must provide a description of each affected activity, including current and proposed activities.

(D) **Equipment, Workforce, and Materials.** The TIA must identify the types and quantities of major pieces of equipment, workforce and pacing materials (materials that affect activity start, duration or finish) required for each affected activity.

(E) **Narrative Report.** The TIA must include a narrative report detailing the rationale used in developing the proposed logic relationships, activity dates, and impact on Project milestones (if applicable) and Final Completion.

(F) **Float.** Contractor must demonstrate that all available float was used relative to a claimed Excusable Delay, or Contractor will not be entitled to an extension of time or delay-related damages.

(G) **Revised Schedule.** Contractor must provide a proposed revised schedule and a narrative description indicating the nature and duration of changes or delay relative to the last approved schedule.

___ **Notice of Delay.** Time being of the essence, Contractor must notify the Project Manager in writing of any delay or potential delay as soon as practicable, and no later than three (3) days after the delay or potential delay is first encountered. This notice requirement applies in addition to any other provision in Article 5 and is a condition precedent to submission of a request for an extension of time, delay-related costs of any kind, or a Claim for Excusable Delay.

___ **Authorized Work Days and Hours.**

___**.1 Authorized Work Days.** Except as expressly authorized in writing by the City, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City:
Monday through Friday

___**.2 Authorized Work Hours.** Except as expressly authorized in writing by the City, Contractor is limited to performing Work on the Project during the following hours:

8am to 5pm

END OF SPECIAL CONDITIONS

Addendum #1

Maintenance pruning of 42 trees on the east side and 38 trees on the west side of San Pablo Avenue, for a total of 80 trees to be pruned. Work is to be done in accordance with accepted industry standards: Tree Work Standards ANSI Z133.1 and ANSI A300 and ISA Best Management Practices – tree Pruning. All debris is to be disposed of in a proper manner. The City may be able to accommodate some wood chip dumping as pre-arranged with the city's Urban Forester.

Addendum #1

*See attached documents:
2018 Tree Pruning – San Pablo Ave – East
2018 Tree Pruning – San Pablo Ave – West*

2018 Tree Pruning - San Pablo Ave - West

Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	bidg/sign/light clearance	remove
398	1	Liqu	reduce lats - remove stubs	x	25				
398	2	Liqu		x	10				
500	1	Liqu		x	15				
500	2	oak	new/dead-rplc Red Oak						
500	3	Liqu			15				
500	4	Liqu			10				
500	5	Liqu			10				
510	1	Liqu	reduce secondary leaders	x	15				
512	1	oak	ok						
512	2	Liqu			10				
512	3	Liqu	rmv grate		10				
518	1	Liqu	rmv grate		10				x
518	2	Liqu	rmv grate		10				x
518	3	Liqu	rmv grate		15				x

2018 Tree Pruning - San Pablo Ave - West

Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	bidg/sign/light clearance	remove
540	1	oak	ok						
540	2	empty	plant Red Oak						
540	3	Liqu	entrance to Bowl	x	10			x	
540	4	oak	Bowl	x					
540	5	Liqu	Bowl	x	15				
618	1	Liqu		x	20				
618	2	Liqu		x	20				
634	1	Liqu		x	15				
640	1	Liqu		x	20				
648	1	Liqu		x	15				
700	1	Liqu		x	15				
718	1	Liqu		x	15				
718	2	Liqu		x	15				
730	1	oak	topped - ok						

2018 Tree Pruning - San Pablo Ave - West

Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	bdg/sign/light clearance	remove
730	2	Liqu		x	20				
736	1	Liqu		x	10				
744	1	Liqu		x	10				
806	1	oak	ok						
810	1	Liqu		x	15				
828	1	oak	ok	x					
828	2	Liqu		x	15				
836	1	Liqu		x	15				
836	2	syc			10				
836	3	syc			10				
836	4	Liqu	parking lot	x	15				
854	1	oak	ok						
856	1	oak	ok						
914	A	oak	ok						

2018 Tree Pruning - San Pablo Ave - West

Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	bdg/sign/light clearance	remove
914	8	oak	ok						
916	1	oak	dead?						
916	2	oak			10			x	
916	3	oak							
922	1	empty	lot - ok						
930	1	Liqu	chiro - ok						
936	1	oak	lot - ok						
938	1	oak			15				
940	1	oak	Towne Center		10				
946	1	oak	ok						
972	1	Liqu	Round Table	x	15				
990	1	Liqu	Benjamin Moore		10				

2018 Tree Pruning - San Pablo Ave - East

Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	blig/sign/light clearance	remove
431	1	oak	ok						
437	1	oak	ok - rmv stake						
505	1	liqu		x	20				
505	2	liqu		x	15				
505	3	liqu		x	15				
545	1	liqu	Included bark	x	20				
563	1	liqu		x	20				
599	1	liqu		x	20				
609	1	cher	rmv in future						
615	1	syc			20				
619	1	oak	ok - stubs, rmv stake						
629	1	liqu		x	15				
635	1	crape	Taco Bell - ok						
665	1	liqu	Pho		15				
665	2	oak	Pho - ok						

2018 Tree Pruning - San Pablo Ave - East

Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	blig/sign/light clearance	remove
705	1	oak	ok			x			
705	2	oak	ok						
705	3	oak	ok						
705	4	oak	ok						
727	1	liqu		x	15				
727	2	liqu		x	10				
727	3	oak	ok						
727	4	oak	ok - stubs						
727	5	oak	ok						
751	1	liqu		x	15				
759	1	liqu		x	15				
801	1	liqu	Mechanics Bank	x	15				
811	1	liqu	Royal Café	x	15				
823	1	liqu		x	15				
823	2	liqu	parking lot	x	15				

2018 Tree Pruning - San Pablo Ave - East

Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	bidg/sign/light clearance	remove
841	1	liqu		x	15				
863	1	euc			10				
865	1	euc	N/E corner of Solano		10			bidg	
905	1	?	dead - replace						
911	1	euc	ok						
917	1	liqu	V-pot	x	10			bidg	
917	2	liqu	lot	x	10				
923	1	oak	ok - topped						
923	2	liqu		x	10				
937	1	liqu	Car Lot - remove damaged limb	x	10			bidg	
945	1	liqu	Log Cabin - multi-leader	x	10				
949	1	oak	ok						
959	1	liqu		x	10				
965	1	liqu	reduce co-leader on south side	x	10				
969	1	liqu	ok						

2018 Tree Pruning - San Pablo Ave - East

Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	bidg/sign/light clearance	remove
969	2	oak	Bus Stop - ok					pedestrian & vehicle	
983	1	liqu		x	10			light & banner	
987	1	oak	ok						
999	1	liqu	Gas - remove stub	x	10			2 leader	
1011	1	oak	ok						
1015	1	liqu	remove wire/lights	x	10				
1019	1	liqu			10				
1025	1	liqu	clear street/light ~6' radial	x	10			bidg/light	
1027	1	liqu			10			bidg/sign	
1031	1	oak	vehicle clear ~14'		15			bidg & veh	
1031	2	liqu		x	10				
1035	1	liqu	remove stub	x	15			bidg	
1035	2	oak	vehicle clear ~14'		10			bidg & veh	
1051	1	oak	ok						
1061	1	liqu	car lot	x	15				

2018 Tree Pruning - San Pablo Ave - East									
Street address	tree #	species	Description	reduce	thin (%)	raise (ft)	crown clean / deadwood	bidg/sign/light clearants	remove
1061	2	liqu	car lot	x	15			traffic signal - 8'	
1071	1	liqu		x	20				
1079	1	liqu		x	25				
1107	1	oak	ok						
1111	1	liqu	reduce lateral	x	20				