

**SPECIFICATION and CONTRACT DOCUMENTS**

**FOR**

**MONTEREY ROAD: SEWER VAULT  
COATING AT LLAGAS CREEK PROJECT**



MORGAN HILL, CALIFORNIA  
PUBLIC WORKS DEPARTMENT

PREPARED BY  
PUBLIC WORKS DEPARTMENT

March 2018

## NOTICE INVITING BIDS

1. **Bid Acceptance.** The City of Morgan Hill (“City”), will accept sealed bids for its **MONTEREY ROAD: SEWER VAULT COATING AT LLAGAS CREEK** Project (“Project”), by or before **Thursday, April 12, 2018, at 2:30 p.m.**, at its Development Services Center office, located at 17575 Peak Avenue, Morgan Hill, California, at which time the bids will be publicly opened and read aloud.
  
2. **Project Information.**
  - 2.1 **Location and Description.** The Project is located on Monterey Road at the Llagas Creek overcrossing in San Martin, CA, approximately 1,000 LF north of the Monterey Road/California Avenue intersection, and the Scope of Work is described as follows: furnishing all plant, labor, supervisions, technical and professional services, materials, tools and equipment and the performance of all operations necessary to complete the Monterey Road: Sewer Vault Coating at Llagas Creek Project including, but not limited to site preparation, traffic control, sewage bypass pumping; surface repairs, coating application, and clean-up as set forth in the Specifications.
  
  - 2.2 **Time for Completion.** The planned timeframe for commencement and completion of construction of the Project is: forty (40) calendar days.
  
3. **License and Registration Requirements.**
  - 3.1 **License.** This Project requires a valid California contractor’s license for the following classification(s): A and C-33.
  
  - 3.2 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder 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.
  
4. **Contract Documents.** The plans, specifications, bid and contract documents for the Project (“Contract Documents”) may be obtained from the City of Morgan Hill, at 17575 Peak Avenue, Morgan Hill, CA, (408) 778-6480. **Electronic copies of the Contract Documents are available on CD for twenty-five dollars (\$25.00). If mailing by USPS, a five dollar (\$5.00) charge will be added. To download plans and specifications at no charge, register at [www.publicpurchase.com](http://www.publicpurchase.com).**
  
5. **Bid Proposal and Security.**

**5.1 Bid Proposal Form.** Each Bid must be submitted using the Bid Proposal form provided with the Contract Documents.

**5.2 Bid Security.** The Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a cashier's or certified check made payable to City of Morgan Hill, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security must guarantee that upon award of the bid, the bidder will execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within ten (10) days after issuance of the notice of award.

**6. Prevailing Wage Requirements.**

**6.1 General.** This Project 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.

**6.2 Rates.** 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 (8) hours. The rate for holiday and overtime work must be at least time and one-half (1/2).

**6.3 Compliance.** 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 successful bidder will be required to provide performance and payment bonds for one hundred percent (100%) of the Contract Price.
- 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. Subcontractor List.** Each bidder must submit the name, location of the place of business, and California contractor license number and DIR registration number for each Subcontractor who will perform work or service or fabricate or install work for the prime contractor in excess of one-half (1/2) of one percent (1%) of the bid price, using the Subcontractor List form included with the Contract Documents.

**10. Instructions to Bidders.** Additional and more detailed information is provided in the Instructions for Bidders, which should be carefully reviewed by all bidders before submitting a Bid Proposal.

**11. Bidders' Conference.** A bidders' conference will be held on Thursday, April 5, 2018 at 10:00 a.m., at the following location: 100 Edes Court, Morgan Hill, California for the purpose of acquainting all prospective bidders with the Contract Documents and the Worksite. The bidders' conference is not mandatory.

**12. Estimated Cost.** The estimated construction cost is \$200,000

By: Irma Torrez

Date: March 16, 2018

Publication Dates: 1) March 23, 2018

2) March 30, 2018

END OF NOTICE INVITING BIDS

## INSTRUCTIONS TO BIDDERS

Each Bid Proposal submitted to the City of Morgan Hill (“City”) for its Monterey Road: Sewer Vault Coating at Llagas Creek Project (“Project”) must be submitted in accordance with the following instructions and requirements:

### 1. Bid Submission.

**1.1 General.** Each bid (“Bid Proposal”) must be signed, sealed and submitted to City, using the form provided in the Contract Documents, by or before the date and time set forth in the Notice Inviting Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will be returned unopened. City reserves the right to postpone the date and time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all indirect costs such as applicable taxes, insurance and field offices.

**1.2 Bid Envelope.** The envelope containing the sealed Bid Proposal and required attachments must be clearly labeled as follows:

BID PROPOSAL  
Morgan Hill DSC  
Monterey Road: Sewer Vault Coating at Llagas Creek Project  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037  
Attention: Bid Opening/RFP  
Bid Date: April 12, 2018  
Bid Time: 2:30 p.m.

The envelope must also be clearly labeled, as follows, with the bidder’s name, address, and its registration number with the California Department of Industrial Relations (“DIR”) for bidding on public works contracts (Labor Code sections 1725.5 and 1771.1):

*[Contractor company name]*  
*[Street address]*  
*[City, state, zip code]*  
DIR Registration No. \_\_\_\_\_

Please note: If City is unable to confirm that the bidder’s DIR registration is current, City must disqualify the bidder and return its bid unopened (Labor Code section 1725.5).

- 2. Examination of Contract Documents and Project Site.** Each bidder 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 Bid Proposal. However, bidders should not enter onto City's property or the Project site without prior written authorization from City. Bidders are responsible for reporting any errors or omissions in the Contract Documents to City prior to submitting a Bid Proposal, subject to the limitations of Public Contract Code Section 1104. City expressly disclaims responsibility for assumptions the bidder might draw from the presence or absence of information provided by City.
- 3. Requests for Information.** Questions regarding the Project, the bid procedures or any of the Contract Documents must be submitted in writing to Kevin O'Connell at 17575 Peak Avenue, Morgan Hill, CA or by email at [Kevin.OConnell@morganhill.ca.gov](mailto:Kevin.OConnell@morganhill.ca.gov).
- 4. Addenda.** Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code section 4104.5, City reserves the right to issue addenda prior to bid time.
- 5. 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 bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. 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).

  - 5.1 Pre-Bid Requests.** Any request for submission made before the Contract is awarded must be submitted to the City Engineer at least ten (10) days before the opening of bids so that all interested bidders may be notified of any approved alternative.
  - 5.2 Post-Award Requests.** After the Contract is awarded, Contractor may submit a substitution within fourteen (14) days after the date of award of the Contract, or as specified in the Special Conditions.
- 6. Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one (1) Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.

- 7. Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed in ink using the Bid Proposal form included in the Contract Documents. The Bid Proposal form should be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder's authorized representative. A Bid Proposal submitted with terms such as "negotiable," "will negotiate," or similar, will be considered non-responsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 9 below, and by the completed Subcontractor List, and Non-Collusion Declaration using the forms included in the Contract Documents.
- 8. Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two (2) officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code section 313.
- 9. Bid Security.** Each Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a cashier's check, a certified check, or a bid bond, using the form included in the Contract Documents, executed by a surety licensed to do business in the State of California, made payable to City. The bid security must guarantee that upon award of the bid, the bidder will execute and submit the Contract on the form included in the Contract Documents, will submit payment and performance bonds one hundred percent (100%) of the maximum Contract Price, and will submit the insurance certificates and endorsements as required by the Contract Documents within ten (10) days after issuance of the notice of award.
- 10. Withdrawal of Bid Proposals.** A Bid Proposal may not be withdrawn for a period of ninety (90) days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code Section 5100 et seq.
- 11. Bid Protest.** Any bid protest must be in writing and received by City at the City Attorney's Office at 17575 Peak Avenue, Morgan Hill, CA, (Fax: (408) 779-1592), before 5:00 p.m. no later than two (2) working days following bid opening (the "Bid Protest Deadline") and must comply with the following requirements:

  - 11.1 General.** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest

submitted by another bidder, but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City's reasonable costs to administer the bid protest. Any such fee must be submitted to City no later than the Bid Protest Deadline, unless otherwise specified. For purposes of this Section 11, a "working day" means a day that City is open for normal business, and excludes weekends and holidays observed by City.

**11.2 Protest Contents.** The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the person representing the protesting bidder if different from the protesting bidder.

**11.3 Copy to Protested Bidder.** A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

**11.4 Response to Protest.** The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

**11.5 Copy to Protesting Bidder.** A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Response Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

**11.6 Exclusive Remedy.** The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

**11.7 Right to Award.** City reserves the right to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest



responsive bid, and to issue a notice to proceed with the Work notwithstanding any pending or continuing challenge to its determination.

- 12. Rejection of Bids; Award of Contract.** City reserves the right, acting in its sole discretion, to waive immaterial bid irregularities, the right to accept or reject any and all bids, or to abandon the Project entirely. The Contract will be awarded, if at all, within ninety (90) days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid.
- 13. Bonds.** The successful bidder is required to submit payment and performance bonds as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract price as awarded, including additive alternates, if applicable.
- 14. Evidence of Responsibility.** Within twenty four (24) hours following a request by City, a bidder must submit to City satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work being required by City, the bidder's organization available for the performance of the Contract and any other required evidence of the bidder's qualifications to perform the proposed Contract. City may consider such evidence before making its decision awarding the proposed Contract.
- 15. License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work.
- 16. Taxes.** The bid price must include all applicable federal, state, and local taxes.
- 17. Ineligible Subcontractor.** 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.
- 18. Subcontract Limitation.** The successful bidder may not subcontract out more than fifty percent (50%) of the original total contract price, except that any items of work in the Engineer's Estimate designated "Specialty Items" may be performed by subcontract and the value of the work may be deducted from the original total contract price before computing the amount of work required to be performed by Contractor's own forces. When items of work in the Engineer's Estimate are preceded by the letters (S) or (S-F), those items are designated as "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the

value of work subcontracted will be determined by the Engineer based on the estimated percentage of the contract item bid price.

19. **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the DIR to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
20. **Bid Schedule.** Bidders are required to fully complete the Bid Schedule form accompanying the Bid Proposal form with unit prices as indicated, and to submit the completed Bid Schedule with their Bid Proposal.

**20.1 Incorrect Totals.** In the event of a computational error for any bid item (base bid or alternate) resulting in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect the corrected amount (estimated quantity X unit cost), unless the cumulative amount of correction changes the total amount of the base bid or bid alternate by more than five percent (5%). In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid for material error under Public Contract Code Section 5100 et seq.

**20.2 Estimated Quantities.** 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.

21. **Bidder's Questionnaire.** A completed, signed Bidder's Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within 48 hours following a request by City. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.

- 22. Safety Orders.** Each Bid must include a bid item for adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which comply with safety orders as required by Labor Code Section 6707.

END OF INSTRUCTIONS TO BIDDERS

**BID PROPOSAL**

Monterey Road: Sewer Vault Coating at Llagas Creek Project

\_\_\_\_\_ (“Bidder”) hereby submits this Bid Proposal to the City of Morgan Hill (“City”) for the above-referenced project (“Project”) in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced therein.

1. **Base Bid.** Bidder 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 (“Base Bid”):  
\$ \_\_\_\_\_.

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

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

3. **Bidder’s Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

3.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents, and represents that, to the best of Bidder’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.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

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

3.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

4. **Award of Contract .** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, that within ten (10) days following issuance of the notice of award to Bidder, Bidder will do all of the following:

**4.1 Execute Contract.** Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;

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

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

**5. Wage Theft Prevention.** All Bidders are expected to have read and understand the “Wage Theft Prevention Policy” adopted by the City Council on July 26, 2017.

The undersigned Bidder certifies that neither Bidder nor its principals have been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, state or local wage and hour laws within the past five years from the date of the submitted bid. Bidder or its principals who are unable to so certify, must disclose wage and hour violations, and shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Bidder’s efforts to date to satisfy the order/judgment. Signing this bid shall constitute signature of this Certification.

The City, at its sole discretion, may disqualify a bidder based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

**6. Bid Security.** As a guarantee that if awarded the Contract, it will perform its obligations under Section 4, above, Bidder is enclosing bid security in the amount of ten percent (10%) of its maximum bid amount in the following form:

\_\_\_\_\_ A cashier’s check or certified check payable to City of Morgan Hill and issued by \_\_\_\_\_ Bank in the amount of \$\_\_\_\_\_.

\_\_\_\_\_ A bid bond, using the Bid Bond form included with the Contract Documents, payable to City of Morgan Hill and executed by a surety licensed to do business in the State of California.

This Bid Proposal is hereby submitted on \_\_\_\_\_, 20\_\_:

s/ \_\_\_\_\_

\_\_\_\_\_  
Name and Title [print]

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

\_\_\_\_\_  
License # and Classification

\_\_\_\_\_  
DIR Registration #

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

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

\_\_\_\_\_  
Fax

END OF BID PROPOSAL

## BID SCHEDULE I – GENERAL

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This Bid Schedule must be completed in ink and must be included with the sealed Bid Proposal. The unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the “Extended Total” column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form. Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, must be substantiated during the Project by the Contractor (either by field measurement, trucking tags, or other means acceptable to the Engineer).

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Mobilization	1 LS	\$	\$
2	Traffic Control	1 LS	\$	\$
3	Stormwater Pollution & Erosion Control	1 LS	\$	\$
4	Sewer Vault Coating	1 LS	\$	\$
5	Temporary Sewer Bypassing	1 LS	\$	\$

Bid Schedule I Total	\$
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END OF BID SCHEDULE





**NONCOLLUSION DECLARATION**

(To be executed by bidder and submitted with bid)

State of California	)	ss.
	)	
County of _____	)	

The undersigned declares:

I am the \_\_\_\_\_ [title] of  
\_\_\_\_\_ [business name], the party  
making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has no paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code Section 7106 and Title 23 U.S.C Section 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

s/ \_\_\_\_\_

\_\_\_\_\_  
Name [print]



## BID BOND

\_\_\_\_\_ (“Bidder”) has submitted a bid, dated \_\_\_\_\_, 20\_\_\_\_ (“Bid”), to the City of Morgan Hill (“City”) for work on the Monterey Road: Sewer Vault Coating at Llagas Creek Project (“Project”). Under this duly executed bid bond (“Bid Bond”), Bidder as Principal and \_\_\_\_\_, its surety (“Surety”), are bound to City as obligee in the penal sum of ten percent (10%) of the maximum amount of the Bid (the “Bond Sum”). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with City in accordance with the terms of the Bid.
2. **Submittals.** Within ten (10) days following issuance of the notice of award to Bidder, Bidder must submit to City the following:
  - 2.1 **Contract.** The executed Contract, using the form provided by City in the Project contract documents (“Contract Documents”);
  - 2.2 **Payment Bond.** A payment bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
  - 2.3 **Performance Bond.** A performance bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
  - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required under the Instructions for Bidders.
3. **Enforcement.** If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to City. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_

Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

- 4. Duration; Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise it will remain in full force and effect for ninety (90) days following award of the Contract or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code Sections 2819 and 2845.

This Bid Bond is entered into and is effective on \_\_\_\_\_,  
20\_\_\_\_.

SURETY:

\_\_\_\_\_

s/ \_\_\_\_\_

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

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

(Attach Acknowledgement, Notary Seal, and Attorney-In-Fact Certificate)

CONTRACTOR:

\_\_\_\_\_

s/ \_\_\_\_\_

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Donald A. Larkin, City Attorney

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

**BIDDER'S QUESTIONNAIRE**

**MONTEREY ROAD: SEWER VAULT COATING AT LLAGAS CREEK PROJECT**

Within forty eight (48) hours following a request by City, a bidder must submit to City a completed, signed Bidder's Questionnaire using this form and including all required attachments. City may request the Questionnaire from one (1) or more of the apparent low bidders following the bid opening, and may use the completed Questionnaire to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

**Part 1: General Information**

Bidder Business Name: \_\_\_\_\_ ("Bidder")

Check One:  Corporation  
 Partnership  
 Sole Proprietorship  
 Joint Venture of: \_\_\_\_\_  
 Other: \_\_\_\_\_

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

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

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

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

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

Email: \_\_\_\_\_

Bidder's California Contractor's License Number(s):  
\_\_\_\_\_

**Part 2: Bidder Experience**

1. How many years has Bidder been in business under its present business name? \_\_\_\_\_

2. Has Bidder completed projects similar in type and size to this Project as a general contractor? \_\_\_\_\_

3. Has Bidder ever been disqualified on grounds that it is not responsible? If yes, provide additional information on a separate sheet of paper regarding the disqualification, including the name and address of the agency or owner of the subject project, the type and size of the project, the reasons that Bidder was disqualified as not responsible, and the month and year in which the disqualification occurred.

4. Has Bidder ever been terminated from a construction project, either as a general contractor or as a subcontractor? If yes, provide additional information on a separate sheet of paper regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether Bidder was under contract as a general contractor or a subcontractor, the reasons that Bidder was terminated, and the month and year in which the termination occurred.

5. Provide information about Bidder's past projects performed as general contractor as follows:

5.1 Six (6) most recently completed public works projects within the last three (3) years;

5.2 Three (3) largest completed projects within the last three (3) years; and

5.3 Any project which is similar to this Project.

6. Use separate sheets of paper provide all of the following information for each project identified in response to the above three (3) categories:

6.1 Project name

6.2 Location

6.3 Owner

6.4 Owner contact (name and current phone number)

6.5 Architect or engineer name

6.6 Architect or engineer contact (name and current phone number)

6.7 Project manager (name and current phone number)

6.8 Description of project, scope of work performed

6.9 Initial contract value (at time of bid award)

6.10 Final cost of construction (including change orders)

6.11 Original scheduled completion date

6.12 Time extensions granted (number of days)

6.13 Actual date of completion

- 6.14 Number and amount of stop notices or mechanic's liens filed
- 6.15 Amount of liquidated damages assessed against Bidder
- 6.16 Nature and resolution of any claim, lawsuit, and/or arbitration between Bidder and the owner.

**Part 3: Verification**

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

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

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

END OF BIDDER'S QUESTIONNAIRE

## CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and \_\_\_\_\_ ("Contractor") for work on the Monterey Road: Sewer Vault Coating at Llagas Creek Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on \_\_\_\_\_, 20\_\_\_\_, (contract date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
  - 2.1 Notice Inviting Bids;
  - 2.2 Instructions to Bidders;
  - 2.3 Addenda, if any;
  - 2.4 Bid Proposal and attachments thereto;
  - 2.5 Contract;
  - 2.6 Payment and Performance Bonds;
  - 2.7 General Conditions;
  - 2.8 Special Conditions;
  - 2.9 Project Drawings and Specifications;
  - 2.10 Change Orders, if any;
  - 2.11 Notice of Award;
  - 2.12 Notice to Proceed;
  - 2.13 And the following: No other documents.
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, City will pay Contractor

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Dollars (\$ \_\_\_\_\_) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.

5. **Time for Completion.** Contractor will fully complete the Work for the Project within forty (40) 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, City will assess liquidated damages in the amount of One Thousand Dollars (\$1,000) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

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 Project 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>.

7.3 **DIR Registration.** City will not enter into the Contract with a bidder, without proof that the bidder 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:

City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037  
Phone: (409) 779-7259  
Attn: City Clerk  
Email: michelle.wilson@morganhill.ca.gov  
Copy to: kevin.oconnell@morganhill.ca.gov

Contractor:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Copy to: \_\_\_\_\_

**10. General Provisions.**

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 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.

**10.5 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 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.

**10.6 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 (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

*[Signatures are on the following page.]*

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- 2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

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

**CITY OF MORGAN HILL:**

**CONTRACTOR:**

**[NAME OF CONTRACTOR]**

\_\_\_\_\_  
Christina J. Turner  
City Manager

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name/Title [print]

**Attest:**

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

*Corporate entities must provide a second signature:*

\_\_\_\_\_  
Michelle Wilson  
Deputy City Clerk

\_\_\_\_\_  
Signature

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

**Approved as to Form:**

\_\_\_\_\_  
Name/Title [print]

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

\_\_\_\_\_  
Donald A. Larkin  
City Attorney

\_\_\_\_\_  
Contractor's License Number(s)

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

\_\_\_\_\_  
Expiration Date(s)

Seal:

\_\_\_\_\_  
Contractor's DIR Registration Number(s)

END OF CONTRACT

## PAYMENT BOND

The City of Morgan Hill ("City") and \_\_\_\_\_ ("Contractor") have entered into a contract, dated \_\_\_\_\_, 20\_\_ ("Contract") for work on the Monterey Road: Sewer Vault Coating at Llagas Creek Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and \_\_\_\_\_, its surety ("Surety"), are bound to City as obligee in an amount not less than (\$\_\_\_\_\_) ("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 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. City waives requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

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

6. **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 of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
7. **Effective Date; Execution.** This Bond is entered into and is effective on \_\_\_\_\_, 20\_\_.

SURETY:

CONTRACTOR:

s/ \_\_\_\_\_

s/ \_\_\_\_\_

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

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

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

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

(Attach Acknowledgment with Notary Seal and Power of Attorney)

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Donald A. Larkin, City Attorney

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

END OF PAYMENT BOND

## PERFORMANCE BOND

The City of Morgan Hill ("City") and \_\_\_\_\_ ("Contractor") have entered into a contract, dated \_\_\_\_\_, 20\_\_\_\_ ("Contract") for work on the Monterey Road: Sewer Vault Coating at Llagas Creek Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and \_\_\_\_\_, its surety ("Surety"), are bound to City as obligee for an amount not less than Dollars (\$\_\_\_\_\_) (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 (1) 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 City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
4. **Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one (1) of the following courses of action:
  - 4.1 Arrange for completion of the Work under the Contract by Contractor, with 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 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 City the amount of City's costs to have the remaining Work completed.

**5. Surety Default.** If Surety defaults on its obligations under the Bond, 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: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**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 of Santa Clara County, and no other place. Surety will be responsible for 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 \_\_\_\_\_, 20\_\_\_\_.

*[Signatures are on the following page.]*



SURETY:

s/ \_\_\_\_\_

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

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

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

s/ \_\_\_\_\_

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Donald A. Larkin, City Attorney

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

END OF PERFORMANCE BOND

**WARRANTY BOND**

The City of Morgan Hill ("City") and \_\_\_\_\_ ("Contractor") have entered into a contract, dated \_\_\_\_\_, 20\_\_ ("Contract") for work on the Monterey Road: Sewer Vault Coating at Llagas Creek Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and \_\_\_\_\_, its surety ("Surety"), are bound to City as obligee in the maximum amount of 50% of the final Contract Price, whichever is greater ("Bond Sum").
  
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
  
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
  
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
  
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:  
  
Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_
  
6. **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 of Santa Clara County, and no other place. Surety will be responsible for City's

attorneys' fees and costs in any action to enforce the provisions of this Bond.

**7. Effective Date; Execution.** This Bond is entered into and is effective on \_\_\_\_\_, 20\_\_.

SURETY:

CONTRACTOR:

s/ \_\_\_\_\_

s/ \_\_\_\_\_

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

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

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

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

(Attach Acknowledgment with Notary Seal and Power of Attorney)

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Donald A. Larkin, City Attorney

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

END OF WARRANTY BOND

# GENERAL CONDITIONS

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## 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.”

**Allowance** means an amount included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

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

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

**City** means the City of Morgan Hill, acting through its City Council, officers, employees, and authorized representatives.

**City Engineer** means the City Engineer for City and his or her authorized delegee(s) designated to oversee and manage the Project on City’s behalf.

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

**Contract Documents** means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

**Contract Price** means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as amended by Change Order or adjusted for an Allowance. 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 Bid Proposal. The Contract Price is deemed to include all applicable federal, state, and local taxes

**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 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 City to provide architectural or engineering services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

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

**Engineer** means the City Engineer for the City of Morgan Hill and his or her authorized delegee(s).

**Final Completion** means 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 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 one hundred twenty five percent (125%) of the amount of any unreleased stop notice, amounts subject to setoff, up to one hundred fifty percent (150%) of any unresolved third-party claim for which Contractor is required to indemnify City, and up to one hundred fifty percent (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**, whether or not capitalized, means “including, but not limited to,” unless the context requires otherwise.

**Inspector** means the individual(s) or firm(s) retained by 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.

**Project** means the public works project referenced in the Contract.

**Project Manager** means the individual designated by City to oversee and manage the Project on 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 Engineer.

**RFI** means a written request from Contractor for information from City or its Design Professional.

**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 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** means Specifications.

**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 City.

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

## Article 2 Roles and Responsibilities

### 2.1 Design Professional.

(A) **General.** Design Professional, as City's representative, is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Interpretation.** Design Professional will decide all questions pertaining to interpretation of the Drawings or Specifications. 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 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 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 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. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person may be permanently dismissed from the Project at the request of the Engineer.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City, Project Manager, 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 (4) years after City's

acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, 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, subject to the fifty percent (50%) limitation set forth in the Instructions to Bidders. 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 City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, provided that 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 City incurs in responding to the request, including legal fees and costs to conduct a hearing.

### 2.4 Coordination of Work.

(A) **Concurrent Work.** 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 City, Design Professional, and Project Manager 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.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

**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 Project Manager. Unless otherwise specified, 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.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent 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.

(C) **Required Contents.** Each submittal must include the Project name and contact number, 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).

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

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for

any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

(F) **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, Project Manager, or Inspector.

(G) **Excessive RFIs.** RFIs will be considered excessive or unnecessary if the Engineer determines that the explanation or response to the RFI is clearly and unambiguously discernable in the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

### **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 (1) 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 request clarification of such, by submitting a written request for information (RFI) in the manner specified by 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 (1) 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, 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) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Bids;
- (M) Instructions to Bidders; and
- (N) 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, unless otherwise specified ("Standard Specifications"), including the most current amendments as of 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 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 “Department” or “State” is deemed to mean 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 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 (10) 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 one hundred percent (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 or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City’s satisfaction, or terminate the Contract for default.

**4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (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 Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of 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. 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 (10) 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. The coverages 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. 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, 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. Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Contractor, at any time as deemed necessary to protect the interests of City.

(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”).**  
Contractor shall maintain CGL and must include coverage for

liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit and a general aggregate limit of four million dollars (\$4,000,000.00), or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.

(2) **Workers' Compensation Insurance and Employer's Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(4) **Pollution (Environmental) Liability:** Because the performance of Contractor's work or service under this Contract involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other



toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Contract. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(5) **Professional Liability:**

- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.

(B) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Professional Liability:
  - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- (2) General Liability Policy:
- a. "Additionally Insured" endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds;
  - b. "Primary and Non-Contributing" endorsements stating that the policy is primary non-contributing;
  - c. "Separation of Insureds" endorsements stating that 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.

(C) **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.

(D) **Certificates.** Contractor must furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to Contractor's Contract with City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to [riskmgmt@morganhill.ca.gov](mailto:riskmgmt@morganhill.ca.gov) or delivered to the Certificate Holder address as follows:

City of Morgan Hill  
Attn: Risk Management  
17575 Peak Avenue  
Morgan Hill, CA 95037

**4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by City, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for fifty percent (50%) of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City.

## **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, 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 City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, 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 City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, 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.

(A) **As-Planned (Baseline) Schedule.** Within fifteen (15) calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to 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 City, 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 (3) 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 City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how 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 City. City 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 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.** 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 City or others, or to facilitate 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 City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by 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, 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 (10) 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 City within ten (10) 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 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 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 will be 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 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 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, 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, 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.** 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, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy 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 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.** City reserves the right to make changes in the Work without invalidating the Contract. 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 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 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 an City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, 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 Project Manager within ten (10) 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 City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by 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 is 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."

**6.3 Adjustments to Contract Price.** The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing 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 fifteen percent (15%) for overhead and profit;

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

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

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

(5) Increased bond or insurance premium costs computed at one and one half percent (1½%) of total of the previous four (4) sums.

**6.4 Unilateral Change Order.** If City disagrees with the amount of compensation or extension of time that Contractor has requested, 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 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 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 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 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 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 City's property, except signage which is required by law or by the Contract Documents, without 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 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 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 City.

(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 Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager'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 City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

**7.5 Noninterference.** Contractor must take reasonable measures to avoid interfering with 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 City accepts the Project.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by 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 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 Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty five (35)

days after the date of award of the Contract, 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 (10) 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.** City will bear the initial cost of testing to be performed by independent testing consultants retained by 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 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 (2) business days following written

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

**7.10 Instructions and Manuals.** Contractor must provide three (3) 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 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 (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct 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 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 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 City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. 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 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 (2) working days, but not more than fourteen (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 City if 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 bidders 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.*** City will promptly investigate the conditions and if 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, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and 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 City.

**7.15 Trenching of Five Feet or More.** As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to 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.** City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify 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 the Engineer. 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 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 eighty five (85) foot radius of the find and may not resume until authorized in writing by City. If required by 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”).

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

## **Article 8 Payment**

**8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to 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 Project Manager 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 Contractor's schedule of values and any other substantiating data required by the Contract Documents.

**Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.**

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due, as certified the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. 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.** 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 one hundred twenty five percent (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 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.** City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Bids, whichever is greater, 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 City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by 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 thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

**8.6 Setoff.** City is entitled to set off any amounts due from Contractor against any payments due to Contractor. 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.** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to 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 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 City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

**8.8 Final Payment.** Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. 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 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 City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

**8.9 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against 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 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 (8) hours of labor constitute a legal day's work under this Contract.

(B) **Penalty.** Under Labor Code Section 1813, Contractor will forfeit to 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 (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.

(C) **Apprentices.** 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, 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 City as a penalty up to Two Hundred Dollars (\$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, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

**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) 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 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 (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$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, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

**9.6 Wage Theft Prevention.** Compliance with Wage and Hour Laws: Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

**Final Judgments, Decisions, and Orders:** For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

**Prior Judgments against Contractor and/or its Subcontractors:** BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

**Judgments or Decisions During Term of Contract:** If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require Contractor to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

**City’s Right to Withhold Payment:** Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any

applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to Contractor until such judgment, decision or order has been satisfied in full.

**Material Breach:** Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

**Notice to City Related to Wage Theft Prevention:** Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

## **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 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 City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide 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 City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, 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 City's

satisfaction. If Contractor fails to promptly take the required corrective measures, 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 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 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 will be accessible and available to Contractor's employees, Subcontractors, and City.

(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.

## **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 Project Manager requesting final inspection. Based on this inspection, the 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 Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly 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 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 City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, 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 thirty five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of 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 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 (1) 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 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 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 (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of 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 City to correct the defective Work.

**11.3 Use Prior to Final Completion.** City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if 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. 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 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.** 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 City in accordance with the requirements of the Contract Documents, and which has been rejected by 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 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 City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by 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 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 copy of the 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 fifteen (15) days following the date that 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 fifteen (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 forty five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty five (45)-day period is extended by mutual

agreement of City and Contractor. However, the City may first request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of 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 City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (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 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 City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to 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 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, City will schedule the meet and confer conference to be held within thirty (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 City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) 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 (10) 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 sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (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 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 bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual 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 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 City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to 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.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and 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.** 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 City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by 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 City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) 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 City's satisfaction, 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 (7) 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 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 City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, 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.** 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 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 (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) 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 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

1.1 **Shop Drawings.** Whenever Shop Drawings are required by the Contract Documents or by the Engineer, Contractor must submit five (5) prints of each shop drawing to the Engineer.

(A) If three (3) prints of the drawing are returned to Contractor marked "NO EXCEPTIONS TAKEN," further revision of the drawings will not be required. If one (1) print of the drawing is returned to Contractor marked "REVISE AND RESUBMIT," Contractor must revise the drawing and resubmit five (5) copies of the revised drawing to the Engineer. City reserves the right to withhold payment due Contractor to cover additional costs of the Engineer's review beyond the second submission.

(B) Fabrication of an item may not commence before the Engineer has reviewed the pertinent shop drawings and returned copies to Contractor marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."

(C) Revisions indicated on shop drawings are deemed necessary to meet the existing requirements of the Contract Documents and may not be taken as the basis of claims for extra Work. Contractor is not entitled to claim for damages or extension of time due to any delay resulting from making the required revisions to shop drawings. The Engineer's review of the shop drawings does not relieve Contractor of responsibility for any errors or omissions contained in the shop drawings nor will such review operate to waive or modify any provision contained in the Contract Documents.

2.1 **Waste Water.** City will provide water required for performance of the Work. Contractor is responsible for the appropriate disposal of waste water in coordination with City personnel. Contractor must provide a backflow preventer on all point of connections to City's Water System. All backflow preventers must be checked and approved by City's Public Works Water Division. Contractor must provide a deposit (refundable) and make necessary arrangements to pick up a hydrant meter at City's Public Works Office. At the completion of the Project, if the hydrant meter is not returned promptly or if it is damaged, Contractor shall forfeit its deposit.

3.1 **Equipment.** Contractor must provide and use equipment and plants suitable to produce the quality of Work and materials required by the Contract Documents. Contractor may be required to remove equipment which the Engineer deems unsuitable for the Work. Contractor must ensure that equipment is operated by trained, experienced operators, and at a speed or rate of production not to exceed that recommended by the manufacturer. Any vehicles used to haul materials over existing streets and highways must be equipped with



pneumatic tires.

**4.1 Lines and Grades.** The Engineer will set the stakes or marks necessary to establish the lines and grades required for the completion of the Work in accordance with the Contract Documents. Contractor must give at least two (2) working days' notice to the Engineer of the need for setting any lines and grades.

(A) **Measurements.** Distances and measurements are given and will be made in a horizontal plane. Grades are given from the top of stakes or nail unless otherwise noted. Three (3) consecutive points shown on the same rate of slope must be used in common in order to detect any variation from a straight grade. Any variation from a straight grade, straight slope or line, must be reported to the Engineer. If such discrepancy is not reported to the Engineer, Contractor is responsible for any error in the finished work.

(B) **Stakes.** Contractor must preserve all stakes and points set for lines, grades or measurements of the Work in their proper places until authorized by the Engineer to remove them. All expense incurred by replacing stakes that have been removed without proper authority may be deducted from any payment due to Contractor.

**5.1 Disposal of Materials Outside of Street Right-of-Way.** Unless otherwise specified in the Specifications or Special Conditions, Contractor is solely responsible for disposing of materials outside the street right-of-way and for all associated costs. Before disposing materials outside the street right-of-way, Contractor must 1) obtain a written release from the property owner releasing City from any and all responsibility in connection with the disposal of material on that property; and 2) obtain permission from the Engineer to dispose of the material at the permitted location.

**6.1 Emergency Contact.** Prior to the commencement of Work on the Project, Contractor must provide contact information to the Engineer for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible for responding to the Worksite within thirty (30) minutes following notification of an emergency by City's Police or Fire Department, regardless of the time of day.

**7.1 Right-of-Way.** City will provide the right-of-way for performance of the Work. Contractor is solely responsible for any additional area required outside of the designated the right-of-way, unless otherwise provided in the Contract Documents.

(A) **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

shall at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

#### 8.1 **Authorized Work Days and Hours.**

(A) **Authorized Work Days.** Except as expressly authorized in writing by 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

(B) **Authorized Work Hours.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project during the following hours:  
8:00 a.m. to 5:00 p.m.

9.1 **Construction Yard Staging.** The Contractor shall be responsible for acquiring or leasing space for temporary construction material and equipment staging. Any staging on private property shall be arranged and agreed upon solely between the Contractor and Property Owner(s). The Contractor shall provide the City a copy of the executed, project-related staging agreement between the Contractor and Property Owner(s).

10.1 **County Encroachment Permit.** The project site is within the County of Santa Clara's right-of-way. The Contractor shall obtain an encroachment permit from the County of Santa Clara's Roads and Airports Department prior to the start of construction work. Information on the County's encroachment permit application can be obtained at:

<https://www.sccgov.org/sites/rda/info/permit/Pages/Encroachment.aspx>

The Contractor's Santa Clara County encroachment permit application package shall consist of the following, but not limited to:

1. Completed encroachment permit application
2. Best management practices (BMP) acknowledgement
3. Workers' compensation acknowledgement
4. City reviewed and approved traffic control plans, stamped and signed by a California registered Civil Engineer
5. Construction staging plans
6. City reviewed and approved temporary sewer system bypass plan(s)
7. Five (5) full size and two (2) half size plan sets (provided by the City)

The Contractor shall provide the City a copy of the County-approved encroachment permit package prior to the start of any construction work.

11.1 **Modeled Sewer Siphon Flow Data.** Contractor shall refer to Figure 1, “Monterey Road Siphon Flows”, providing modeled flow data from the City’s hydraulic model at both existing sanitary sewer siphons along Monterey Road. The data is for reference only and the Contractor shall be responsible for field verification of the sanitary sewer flows for temporary sewer bypass operations’ planning and implementation.

PRELIMINARY

Flow	21" Siphon	30" Siphon
	(mgd)	(mgd)
Average Dry Weather	0.17	2.23
Peak Dry Weather	0.38	4.04
Average Wet Weather	0.17	2.34
Peak Wet Weather	0.95	6.55

2/26/2016

Figure 1. Monterey Road Siphon Flows, prepared by Akel Engineering Group, Inc. on February, 26, 2016

END OF SPECIAL CONDITIONS

# TECHNICAL PROVISIONS

## SECTION 100

### MEASUREMENT AND PAYMENT

#### 1.01 Description of Work

The work consists of furnishing all plant, labor, supervision, technical and professional services, materials, tools and equipment and the performance of all operations necessary to perform **Monterey Road: Sewer Vault Coating at Llagas Creek** including, but not limited to site preparation, surface repairs, coating application, and clean-up as specified herein.

All work shall be performed in strict accordance with these specifications and the latest edition of the Design Standards and Standard Details for Construction of the City of Morgan Hill (City).

#### 1.02 Access to Work

The Contractor shall at all times provide proper facilities for access and inspection of the work by authorized representatives of local, state or federal governments.

#### 1.03 Utilities

- A. Power: The Contractor shall provide any construction power used at the project site. They shall make all arrangements for power generation and/or with the electrical utility for power takeoff points, voltage and phasing requirements, transformers, and metering and shall pay all costs and fees arising therefrom. It shall be the Contractor's responsibility to provide all special connections required for their work.
- B. Water: The Contractor shall obtain a hydrant meter from the City and pay all fees and quantity charges for construction water. All water provided shall be at times which are not detrimental to the health, safety, and comfort of the citizens of Morgan Hill. Disposal shall be performed by the Contractor in coordination with City personnel.
- C. Sanitary Facilities: The Contractor shall make arrangements for use of adequate toilet facilities at or near the site of work. Such facilities shall be subject to the acceptance of the Engineer as to location and type. The Contractor shall maintain the sanitary facilities in acceptable condition from the beginning of the work until completion and shall remove the facilities and disinfect the premises. All portions of the area shall be left in a clean and sanitary condition.

#### 1.04 Lands and Fences

The City will provide certain lands and right-of-ways as shown on the Drawings and determined by the Engineer in connection with work under the contract, without cost to the Contractor. The Contractor shall limit their operations to the areas and lands provided.

Before final acceptance of the work, the Contractor shall obtain a written statement of release indicating the City acceptance of the site conditions as restored by the Contractor.

#### **1.05 Preservation of Property**

The Contractor shall exercise due care in the performance of the work to avoid injury, damage, or loss to existing improvements, utility facilities, and other property of any nature on or near the site of the work. The Contractor shall be responsible as follows for any injury, damage, or loss to property arising out of the work, irrespective of fault or negligence, excepting only such injury, damage, or loss to property as is caused solely by the negligence or willful misconduct of the City or its officers or employees.

The Contractor shall repair, replace or otherwise restore the property to a condition as good as it was when they commenced work, or as good as required by the Specifications, if applicable. In addition, the Contractor shall perform such temporary repairs of any facility, necessary to restore it to service, as are ordered by the Engineer. At the request of the property Owner, or upon the failure of the Contractor to perform promptly, the Engineer may cause such repair, replacement, restoration, or temporary repair to be performed by the City or its designee, in which case the costs shall be borne by the Contractor

The Contractor shall exercise due care to locate any underground improvements for facilities which may be affected by the Contractor's operations. Contractor shall call Underground Service Alert forty-eight (48) hours before the start of their construction and shall be responsible for injury, damage, or loss thereto as provided in this article, whether or not such improvements or facilities are shown on the Drawings. If improvements or facilities not shown on the Drawings are encountered within the City furnished right-of-way, any removal, replacement, alteration or Modification thereof necessary for performance of the work to be performed by the Contractor may be ordered by the Engineer as items of Extra Work.

Except as otherwise expressly provided, the Contractor shall comply with all terms and conditions of any instrument granting the City or the Contractor the right to enter upon property which pertain to the time, method, or manner of performing the work. The Contractor shall indemnify and hold harmless the City and all officers and employees of the City connected with the work from all claims, suits or actions of any nature brought for on account of the violation of any such terms and conditions by the Contractor or their subcontractors, suppliers, agents or employees.

#### **1.06 Restoration of Structures and Surfaces**

All existing facilities that are broken or damaged by the installation of work shall be of the same kind of material with the same finish and in not less than the same dimensions as the original work. All work shall match the appearance of the existing improvements as nearly as possible.

#### **1.07 Environmental Control**

The Contractor shall not pollute any drainage course or its tributary inlets with fuels, oils, bitumen, acids, insecticides, herbicides or other harmful materials. The Contractor shall comply with all applicable Federal, State, County and Municipal laws concerning pollution of waterways.

### **1.08 Safety**

The Contractor shall execute and maintain the work so as to avoid injury or damage to any person or property. The Contractor shall comply with the requirements of CAL-OSHA and all applicable laws and the specifications relating to safety measures applicable in particular operations or kinds of work.

### **1.09 Clean-Up**

The Contractor shall not allow the site of the work to become littered with trash and waste material but shall maintain the site in its normal neat and orderly condition throughout the construction period. On or before the completion of the work, the Contractor shall tear down and remove all temporary structures they built and shall remove rubbish of all kinds from any of the grounds which the Contractor has occupied and leave them in first-class condition to the satisfaction of the Engineer.

### **1.10 Reference to State Specifications**

Whenever reference is made to "Standard Specifications" or "State Specifications," it shall be interpreted to mean the current edition of the Standard Specifications of the State of California, Department of Transportation and the following shall apply:

- A. In case of conflict between the State Specifications and these Special Provisions, these Special Provisions shall govern.
- B. Where the term "Engineer" is used in the State Specifications, it shall be understood to mean the person or persons designated by the City to act as its duly authorized agent or agents.
- C. Where the term "Special Provisions" is used in the State Specifications, it shall be understood to mean these Specifications.
- D. Where the term "State" is used in the State Specifications, it shall be understood to mean "City."
- E. Any provisions for measurement and payment specified in the State Specifications shall be disregarded and the provisions of these Special Provisions shall govern.

### **1.11 Site Security**

The Contractor shall make all provisions to maintain the security of the work site to prevent accidental injury to the general public or vandalism.

### **1.12 Required Permits**

The contractor will be responsible in securing permits. Permits are expected to be required for the by-pass piping across the Llagas Creek Bridge from the County of Santa Clara Roads and Street Division.

### **1.13 (Not Used)**

#### **1.14 Schedule, Progress, and Order of the Work**

The Contractor shall give forty-eight (48) hours notice before beginning work so that the inspection of the work can be arranged. Before beginning work, the Contractor shall submit for approval by the City a proposed schedule indicating the various segments of work and the estimated dates of commencing and completing the work.

Monterey Road is located within Santa Clara County Jurisdiction and as such requires the Contractor to obtain an Encroachment Permit for the work and temporary placement of the sewage bypass piping along the bridge deck and along the shoulder.

**The relined sewer vaults on Monterey Road at Llagas Creek shall be completely operational within Forty (40) calendar days after commencement of work.**

#### **1.15 (Not Used)**

#### **1.16 City Furnished Materials (None)**

#### **1.17 List of Attachments**

The following attachments are included with these Specifications:

Exhibit "A"	Location Map
Exhibit "B"	Aerial Site Photo
Exhibit "C"	North Sewer Vault Photos
Exhibit "D"	South Sewer Vault Photos
Exhibit "E"	Blueprint for a Clean Bay

#### **1.18 Traffic Control**

Traffic on streets shall not be impeded by the Contractor's operations at any time during the project. When work is performed after 9:00 a.m. at least one lane of traffic in each direction shall be available at all times. Flags, flagmen, barricades and other items for traffic safety shall be provided by the Contractor. At all times before and after work two lanes in each direction shall be available for traffic.

All pavements damaged or removed shall be neatly removed and replaced in accordance with the City Standards and as directed by the City and County of Santa Clara.

#### **1.19 Site Preparation**

The site shall be disturbed to the minimum extent possible. All areas disturbed, except those where permanent facilities are installed, shall be seeded at the end of construction with a quick growing seed mix to be approved by the City. Portions of the site may be used for equipment storage with approval of the City.

### **1.20 Services of Manufacturer's Representative**

On completion of this work, the manufacturer or supplier's representative shall submit their inspection, operation, adjustment and tests. The report shall include detailed descriptions of the points inspected, tests and adjustments made, quantitative results obtained if such are specified, and suggestions for precautions to be taken to insure proper maintenance. The report also shall include a certificate that the new surface conforms to the requirements of the Contract and is ready for permanent operation and that nothing in the installation will render the manufacturer's warranty null and void.

### **1.21 Morgan Hill Standard Drawings**

The standard details of the City of Morgan Hill are available at the Public Works Counter of the City at 100 Edes Court, Morgan Hill. All work shall conform to drawings unless otherwise specified or noted.

### **1.22 BID ITEMS**

#### **A - MOBILIZATION (Bid Item No. 1)**

The contract lump sum price paid for Mobilization shall include full compensation for performing the scope of work as specified in Technical Specifications Section 101, "Mobilization".

Mobilization shall be measured and paid by lump sum. The Contract lump sum price for Mobilization should not exceed five percent (5%) of the total base bid contract price. Any amount bid on the bid schedule in excess of five percent (5%) shall be withheld from payment until the completion of project, to be paid as part of the final payment.

#### **B – TRAFFIC CONTROL (Bid Item No. 2)**

The contract lump sum price paid for Traffic Control shall include full compensation for performing the scope of work specified in Technical Specifications Section 102, "Traffic Control", including all necessary submittals, implementation and maintenance of the approved traffic control plans for all work in construction zones throughout the duration of the project. Payment for complying with the provisions for "Traffic Control" shall be paid by lump sum and paid on a percentage of completion of other items of work for each period invoiced.

#### **C. – STORMWATER POLLUTION AND EROSION CONTROL (Bid Item No. 3)**

The contract lump sum price paid for compliance with Stormwater Pollution and Erosion Control (all BMPs) as specified in Technical Specifications Section 103, "Stormwater Pollution and Erosion Control" and Exhibit "E".

Payment for complying with the provisions for "Stormwater Pollution Control" shall be paid by lump sum and paid on a percentage of completion of other items of work for each period invoiced.



**C. – SEWER VAULT COATING (Bid Item No. 4)**

The contract lump sum price paid for Sewer Vaults Coating shall include full compensation for furnishing all plant, labor, supervision, technical and professional services, materials, tools and equipment and the performance of all operations necessary including, but not limited to, site preparation, vault surface preparation, coating application, cleaning and coating the vault fall protection grates, clean-up and return the sewer vaults to complete working condition, and as specified in Technical Specifications Section 105, "Vault Rehabilitation" as specified herein. Payment will be measured and paid on a lump sum basis.

**D. – TEMPORARY SEWER BYPASSING (Bid Item No. 5)**

The contract lump sum price paid for Temporary Sewer Bypassing shall include full compensation for furnishing all labor, materials, tools, equipment, and all incidentals necessary to perform sewage bypassing as described above and as directed by the Engineer and no additional allowance will be made therefore.

**2.01 Clearing and Grubbing, Demolition**

Clearing and grubbing for the work site shall conform to Section 16 of the State Specifications. All cleared and grubbed materials shall be removed from the City's property and disposed of by the Contractor at an approved dump.

**2.02 Site Protection**

**General**

Existing improvements, adjacent property, utilities, and other facilities shall be protected from injury or damage resulting from the Contractor's operations.

**Safety and Health Requirements**

All work shall be completed in accordance with applicable Federal, State and local OSHA standards for construction, including "Permit Required Confined Space". Safety procedures shall be strictly enforced. Nothing in this section shall be deemed to allow the use of shoring, sloping, or protective system less effective than that required by the Occupational Safety and Health Act. All excavations shall be performed, protected, and supported as required for safety and in the manner set forth in the operation rules, orders, and regulations prescribed by "Cal-OSHA."

All necessary scaffolding shall be furnished and installed by the Contractor. Such scaffolding shall conform to regulations of the State Industrial Accident Commission and local ordinances.

All necessary precautions shall be taken to prevent fire. Rags and waste soiled with paint shall be removed from the premises at the end of each day's work, or stored in metal containers with metal covers. All other excess material shall be removed and disposed of by the Contractor.

Barriers shall be placed around the vaults to warn all pedestrian and vehicular traffic of the work. The vaults shall be covered at the end of work each day.

**Protection of Existing Flora**

All trees and shrubs found suitable for improvement and beautification, which will not interfere with excavation or embankment or cause disintegration of the improvements shall not be disturbed. The Contractor shall not damage, disturb, or cause injury to shrubbery, vines, plants, grasses, and other vegetation growing outside of the clearing limits. The dragging and the piling of materials of various kinds and the performing of other work which may be injurious to vegetation shall be confined to areas which have no vegetation or which will be covered by embankment or disturbed by excavation during grading operations.

**Protection of Existing Structures**

The Contractor, in the use of heavy equipment, shall protect existing power lines, roofs, building, other structures, and utilities.

**Removal of Water/Dewatering**

The Contractor shall dispose of the water from the work in a suitable manner without damage to adjacent property. The Contractor shall be responsible for obtaining all water discharge permits that are required. No water shall be drained into work built or under construction. The Contractor shall obtain all permits from local and state agencies as may be required to dispose water in local waterways.

Water shall be disposed of in such a manner as not to be a menace to the public health.

**END OF SECTION 100**

**SECTION 101**

**MOBILIZATION**

**PART 1 – GENERAL**

**1.01 WORK INCLUDED**

Mobilization shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the project site, and for all other work and operations which must be performed or for costs incurred prior to beginning work and in the course of work on various contract items at the project site.

Mobilization shall be in accordance with Section 9-1.16D “Mobilization” of the Caltrans Standard Specifications.

**PART 2 – MATERIAL AND EQUIPMENT**

(None)

**PART 2 – EQUIPMENT**

(None)

**PART 2 – MEASUREMENT AND PAYMENT**

Included in Section 100 of these Technical Specifications

**END OF SECTION 101**

## SECTION 102

### TRAFFIC CONTROL

#### **PART 1 - GENERAL**

##### **1.01 WORK INCLUDED**

- A. At all times, provide safe and adequate passage for vehicular and pedestrian traffic through, around and adjacent to all construction operations by use of detours, bridging, backfilling, paving, traffic barriers or other favorably reviewed means.
- B. Monterey Road is located within Santa Clara County Jurisdiction and as such requires the Contractor to obtain an Encroachment Permit for the work and temporary placement of the sewage bypass piping along the bridge deck and along the shoulder.
- C. Establish and maintain detours and conduct construction operations in such a manner as to minimize hazard, inconvenience and disruption to the public.
- D. Equally direct traffic control to the regulation and protection of pedestrian traffic including pedestrians, bicyclists, joggers, skaters, skateboarders, etc.
- E. Provide protection of pedestrians and separation of pedestrians from construction operations at all times.
- F. Direct, divert and detour traffic through, around and adjacent to construction operations in accordance with a traffic control plans to be submitted by the Contractor and approved by the Engineer. The Contractor may revise the Traffic Control Plan as necessary only with the Engineer's approval.
- G. Attention is directed to Sections 7-1.03, "Public Convenience", 7-1.04, "Public Safety", and Section 12, "Temporary Traffic Control," of the Standard Specifications. In connection with said sections, it is understood that all lights, signs barricades, flagmen or other necessary devices shall be furnished and maintained by the Contractor at his own expense.
- H. The Contractor shall furnish written advance notices describing the work to be done and shall distribute these notices to all affected property owners and tenants Five (5) working days prior to beginning the work on each street. Failure to distribute notices shall be sufficient cause for the Engineer to suspend the work until Five (5) working days after such notices are distributed.
- I. The contractor shall also furnish door hangers as specified in the Special Provisions SP 11 "Notifications".

##### **1.02 REFERENCES, CODES, AND STANDARDS**

- A. 2010 Standard Plans & Specifications, CA Department of Transportation, unless noted otherwise.
- B. California Manual on Uniform Traffic Controls Devices (CA MUTCD), California Department of Transportation, latest edition, unless noted otherwise.

### **1.03 SUBMITTALS**

#### **A. Traffic Control Plan:**

1. Submit at least Fifteen (15) working days prior to start of work a traffic control plan for review by the Engineer which conforms to all requirements of these Specifications. Include circulation, signs, pedestrian and bicycle access, striping, safety devices, lane closures, detours, parking prohibitions, etc.
2. A traffic control plan, specific for each stage or portion of the work, shall be submitted for review by the Engineer at least Fifteen (15) working days prior to start of each work phase.
3. No work affected by lane closures, detours and/or parking prohibitions shall begin until written permission is received from the Engineer.
4. Traffic control plans shall conform to the CA-MUTCD.

### **1.04 JOB CONDITIONS**

#### **A. The following general job conditions apply to the project:**

1. Provide access to all residences and businesses whenever possible throughout the duration of the project. Notify property owners forty-eight (48) hours in advance of work that will interrupt use of driveways or other frontage improvements.
2. Street parking may be restricted as necessary to facilitate construction activity. Contractor shall post temporary "No Parking" signs forty-eight (48) hours in advance of the start of construction requiring parking restrictions. The City will provide the contractor with "No Parking" signs. Contractor shall provide barricades and/or other means, approved by the Engineer, to post the signs. These signs shall be removed when the street is reopened for traffic. At no time shall signs be nailed or stapled to trees.
3. Street closures will not be permitted without written approval of the Engineer. Any proposed street closure plan shall be approved by the Engineer prior to starting the operation.
4. Orange traffic cones and barricades as appropriate shall be used to mark traffic lanes whenever vehicles are restricted from using the normal traffic lanes on a street.
5. Whenever the Contractor's operations create a condition hazardous to traffic, or to the public, the Contractor shall take the necessary precautions and provide adequate means to protect those who must pass through or over the work. If the Contractor shall appear to be neglectful or negligent in providing such warning or protective measures, the Engineer may direct attention to the existence of a hazard, and require that necessary barricades, warning signs, lights or flagmen be installed by the Contractor. Any action by the Engineer as provided herein shall not relieve the Contractor from responsibility for public safety.

## **PART 2 - PRODUCTS**

### **2.01 TRAFFIC CONTROL DEVICES**

- A. Traffic signs, flashing lights, lighted arrow boards, portable changeable message signs, barricades and other traffic safety devices used to control traffic shall conform to the requirements of Section 12, "Temporary Traffic Control," and Section 7, "Legal Relations and Responsibility to the Public," of the State Standard Specifications.
- B. Flashers shall be provided on each barricade.

## **PART 3 - EXECUTION**

### **3.01 GENERAL**

- A. Unless otherwise approved by the Engineer, one lane of traffic in each direction shall be maintained at all times when work is being performed on the project. During these times the Contractor may reduce the number of through traffic lanes to one if a minimum of two (2) flagmen are used to direct traffic through the project area using portable radio transmitters if visibility is obstructed. No lane shall be closed to traffic until immediately prior to start of construction and shall be re-opened as soon as possible following, with a maximum permissible delay time of five (5) minutes.
- B. When traffic cones or delineators are used to define a temporary edge of traffic lane, the edges of the cones or delineators adjacent to traffic shall be considered to be the edge of the traffic lane and a minimum lane width of eleven (11) feet shall be maintained unless otherwise approved by the Engineer.
- C. Message signs shall be in place and in operation a minimum of seven (7) calendar days prior to the commencement of the portion of work and remain in place a minimum of seven (7) calendar days after initiation of the portion of work.
- D. Convenient access to driveways and buildings in the vicinity of work shall be maintained as much as possible. Temporary approaches to, and crossing of, intersecting traffic lanes shall be provided and kept in good condition.
- E. When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.
- F. If any component in the traffic control system is damaged, displaced or ceases to operate or function as specified, from any cause, during the progress of the work, the Contractor shall immediately repair or replace said component to its original condition and reinstall the component in its original location.
- G. Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall take the necessary precautions and provide additional traffic control measures to protect those who must pass through the work. If the Contractor shall appear to be neglectful or negligent in providing warning or protective measures, the Engineer may direct attention to the existence of a hazard, and require that additional barricades, flashers, warning and detour signs or lights be installed by the Contractor, or additional flaggers provided. Any action or lack of action by the Engineer as provided

herein shall not relieve the Contractor from responsibility for public safety.

- H. Personal vehicles of the Contractor's employees shall not be parked on the traveled way or shoulders of roadways open to the public.

### **3.02 LANE CLOSURES AND DETOURS**

- A. Unless otherwise approved by the Engineer, one lane of traffic in all directions shall be maintained at all times when work is being performed on the project. Emergency vehicles shall be permitted to pass through the work area without delay at all times. A maximum permissible delay time of five minutes in any direction will be allowed.
- B. When ordered by the Engineer, the Contractor shall furnish flagmen for the purpose of expediting the safe passage of public traffic through the work under one-way controls. At locations where traffic is being routed through construction under one-way controls and when approved by the Engineer, the movement of the Contractor's equipment from one portion of the work to another shall be governed in accordance with such one-way controls.
- C. If significant paving operations are required, the Contractor shall furnish and place sufficient barricades at all cross streets to protect new surfaces from traffic until sufficiently cooled as well as placing "Detour" signs as necessary to clearly delineate detour routes for all impassable intersections. Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners and the motoring public. Convenient access to any driveways, houses and buildings along the line of work shall be maintained at all times.
- D. Upon completion of work on a lane, and during any time the Contractor's operations are shut down by breakdown, or other causes, and during any period when work is not permitted in traffic lanes, the Contractor's equipment shall be immediately and entirely withdrawn from the traveled way, and public traffic shall be allowed the use of a minimum of two traffic lanes.
- E. Open excavations and trenches shall be adequately covered when no work is being performed.
- F. Changes to these requirements shall only be allowed when approved in writing by the Engineer.

### **3.03 NO PARKING SIGNS**

- A. "No Parking" signs shall be posted a minimum of 48 hours in advance of the parking restriction.
- B. The date and time of parking restrictions shall be clearly posted on "No Parking" signs. "No Parking" signs shall be provided by the Contractor. Contractor shall monitor and keep current all sign placements and sign removals to coincide with actual construction operations.

### **PART 4 - MEASUREMENT AND PAYMENT**

Included in Section 100 of these Technical Specifications.

**END OF SECTION 102**

## SECTION 103

### STORMWATER POLLUTION AND EROSION CONTROL

#### **PART 1 – GENERAL**

The goal of these following requirements is to prevent the pollution of storm water runoff on construction projects by keeping pollution out of storm drains and creeks, reducing the exposure and discharge of materials and wastes to storm water, and by reducing the erosion and sedimentation. Storm drains discharge runoff directly to creeks and the bay without treatment.

#### **1.01 WORK INCLUDED**

- A. Install erosion control measures (silt fence and erosion control matting) where shown on plan (or as directed in the specifications for the various items of work) to prevent sediment-laden runoff from migrating into creeks and public storm drain system.
- B. Prohibit illicit discharge (non-rainwater) into the storm drain system.
- C. Construct, inspect and maintain any and all necessary systems to eliminate contaminants from entering the storm water system.
- D. Clean up and control of work site materials, spoils and debris.
- E. Removal of contaminants produced by the project.
- F. After job completion, removal of systems installed by the Contractor to control contaminants from entering the storm water system.
- G. The work shall include the provision of all labor, materials, equipment and apparatus not specifically mentioned herein or noted on the plans, but which are incidental and necessary to complete the work specified.

#### **1.02 REFERENCES, CODES AND STANDARDS**

- A. National Pollution Discharge Elimination System (NPDES), Morgan Hill Municipal Regional Permit.
- B. Best Management Practices Construction Handbook, California Stormwater Quality Association, latest version.

#### **1.03 QUALITY ASSURANCE**

- A. All work performed under this contract and all contractors and their associates and/or employees are required to comply with all applicable storm water regulations and to implement Best Management Practices (BMPs) at all times.
- B. Training
  - 1. All employees and subcontractors shall be trained on the storm water pollution prevention requirements contained in these Specifications. A supply of spill clean-up materials such as rags or absorbents shall be kept readily accessible on-site.



## **PART 2 - PRODUCTS**

- A. Materials used (silt fence and others as needed) shall be in conformance with Caltrans' Construction Site Best Management Practices (BMP's) Manual, latest edition, or the CASQA Construction BMP Handbook, latest edition.
- B. Silt Fence: Shall be of the standard type (moderate sediment loads), a woven geotextile with a minimum width of 36 inches. Fabric shall conform to the requirements of ASTM D6461.
- C. Erosion Control Matting: Shall consist of natural materials only (no synthetic). Material shall be jute fiber, coconut fiber, curled wood fiber, straw, or a combination of these materials. All components of the mat (netting, sewing, or adhesive) shall be made of natural materials.

## **PART 3 – EXECUTION**

### **3.01 SILT FENCE INSTALLATION**

- A. Install silt fence where shown on plan, and where needed to prevent sediment-laden runoff from entering public waterways. Silt fence should be installed prior to the start of excavation or soils disturbance of whatever nature and shall remain in place until the disturbed areas are permanently stabilized.
- B. Silt fence shall be installed along a level contour, so that the stormwater is not allowed to pond more than 1.5 feet at any point along the silt fence.
- C. Turn the ends of the silt fence up-hill to prevent the runoff from flowing around the fence.
- D. The "Traditional Method" installation guidelines of the CASQA Construction BMP Handbook, SE-1 shall be followed.

### **3.02 EROSION CONTROL MATTING INSTALLATION**

- A. Install mat where disturbed slopes exceed 3:1 (or as directed elsewhere in these specifications or on plan), and where needed to prevent sediment-laden runoff from entering public waterways. Mat should be installed immediately after the backfilling is complete and final slope established.
- B. Mat shall be installed along all of the disturbed area and secured in place with wire staples. Wire staples shall be minimum 11-gauge steel wire and should be U-shaped with 8" legs and 2" crown.
- C. Mat shall be anchored a minimum of 18" beyond the top of slope in a 6" deep by 6" wide trench. Backfill trench and tamp earth firmly.
- D. The CASQA Construction BMP Handbook, detail EC-7 shall be followed for materials and installation.

### **3.03 RECYCLING**

- A. At the end of each working day, all scrap, debris and waste material shall be collected, and materials disposed of properly.
- B. Dry, empty paint cans/buckets, old brushes, rollers, rags and drop cloths shall be disposed of in approved waste collection.
- C. Dumpsters shall be inspected for leaks. As leaks are detected, the trash hauling contractor shall be contacted to replace or repair dumpsters that leak.
- D. Water from cleaning dumpsters shall not be discharged on-site.
- E. Regular waste collection shall be arranged for before dumpsters overflow.

### **3.04 HAZARDOUS MATERIAL/WASTE MANAGEMENT / MATERIALS MANAGEMENT**

- A. Designated areas of the project site shall be proposed by the contractor for approval by the Engineer suitable for material delivery, storage and waste collection as far from catch basins, gutters, drainage courses and creeks as possible.
- B. All hazardous materials such as pesticides, paints, thinners, solvents and fuels; and all hazardous wastes such as waste oil and antifreeze shall be labeled and stored in accordance with State and Federal regulations.
- C. All hazardous materials and all hazardous wastes shall be stored in accordance with secondary containment regulations, and it is recommended that these materials and wastes be covered as needed, to avoid potential management of collected rain water as a hazardous waste.
- D. The contractor shall dispose of all excess thinners, solvents, chemicals, oil-based and water-based paint as hazardous waste.
- E. Regular hazardous waste collection shall be arranged for to comply with time limits on the storage of hazardous wastes.
- F. Granular materials shall be stored a minimum of ten feet from the closest catch basin and curb return. The contractor shall not allow these granular materials to enter the storm drain or creek
- G. Warning signs shall be posted in areas containing or treated with chemicals.
- H. An accurate up-to-date inventory, including Material Safety Data Sheets (MSDS) of hazardous wastes stored on site shall be kept and available to assist emergency response personnel in the event of a hazardous materials incident.
- I. Maintenance and fueling of vehicles and equipment shall be performed in a designated, bermed area, or over a drip pan that will not allow run-off of spills. Vehicles and equipment shall be regularly checked and have leaks repaired promptly. Secondary containment shall be used to catch leaks or spills any time that vehicle or equipment fluids are dispensed, changed or poured.

### **3.05 CHEMICAL USAGE**

- A. When rain is forecast within 48 hours, or during wet weather, the Engineer may prevent the contractor from applying chemicals in outside areas.

- B. Pesticides or fertilizers shall not be over-applied and material manufacturer's instructions shall be followed regarding uses, protective equipment, ventilation, flammability and mixing of chemicals. Over-application of a pesticide constitutes a "label violation" subject to an enforcement action by the San Clara County Agriculture Commissioner.

### **3.06 DUST CONTROL**

- A. Reclaimed water shall be used to control dust on a daily basis as directed by the Engineer.
- B. At the end of each working day, or as directed by the engineer, the roadways and on-site paved areas shall be cleaned and swept of all materials attributed to or involved in the work. Streets shall not be washed down into a storm drain or creek in lieu of street sweeping. Water wash may be picked up by a vacuum unit in lieu of sweeping.

### **3.07 SAWCUTTING**

- A. The contractor shall cover, or barricade catch basins using control measures such as filter fabric, straw bales, sand bags and fine earthen dams to keep slurry out of the storm drain system. The contractor shall ensure that the entire opening is sealed.
- B. Sawcutting debris and spoils be removed by shovel, absorption, vacuum or pick up of waste prior to moving to the next location or at the end of each working day, whichever is sooner.
- C. If slurry enters a catch basin, the slurry shall be removed from the storm drain and the Engineer shall be notified immediately.

### **3.08 DEWATERING OPERATIONS**

- A. Water shall be routed through a control measure as determined and approved by the Engineer such as a sediment trap, sediment basin or Baker tank to remove settleable solids prior to discharge to the storm drain system. Filtration of the water following the control measure may be required on a case-by-case basis.
- B. The filtered water shall be reused for other purposes such as dust control or irrigation to the extent possible.
- C. If the project is within an area of known groundwater contamination, the water from dewatering operations shall be tested prior to discharge. If the water meets the Regional Water Quality Control Board standards, it may be discharged into the storm drain.

### **3.09 CONCRETE GROUT AND MORTAR WASTE MANAGEMENT**

- A. Concrete, grout and mortar shall be stored away from the drainage areas and ensure that these materials do not enter the storm drain system.
- B. Concrete trucks shall not be washed out into streets, gutters, storm drains, drainage channels or creeks. The wash water must be disposed to a proper concrete washout area or self-contained by the ready-mix concrete truck, both methods shall remove and handle the wash water from the Town limits.

### **3.10 PAVING OPERATIONS**

- A. Catch basins and manholes shall be covered when paving or applying seal coat, tack coat, scrub seal, microsurfacing, and/or fog seal.
- B. The Engineer may direct the contractor to protect drainage courses by using control measures such as earth dike, straw bale and sand bag to divert run-off or trap filter sediment.
- C. Excess sand (placed as part of a sand seal or to absorb excess oil) shall not be swept or washed down into gutters, storm drains or creeks. The sand shall be collected and returned to the stockpile or disposed of in a trash container or hauled to an approved dump site. Water shall not be used to wash down fresh asphalt concrete.

### **3.11 PAINTING**

- A. The cleaning of painting equipment and tools shall be performed in a designated area that will not enter the gutters, storm drains or creeks.
- B. Wash water from aqueous cleaning of water-based paint tools and equipment shall be disposed of in a sanitary sewer or onto a designated dirt area.
- C. Paint thinners and solvents from oil-based paints shall be filtered and re-used when possible. Waste sludge, thinner and solvent from cleaning tools and equipment shall be disposed of as a hazardous waste.

### **3.12 SITE CLEANUP**

- A. The cleaning of equipment of materials shall not be performed on-site or in the street using soaps, solvents, degreasers, steam cleaning or equivalent methods.
- B. All cleanup must be performed in a designated area that will not allow the cleaning rinse to flow off-site or into streets, gutters, storm drains, or creeks.

## **PART 4 - MEASUREMENT AND PAYMENT**

Included in Section 100 of these Technical Specifications.

**END OF SECTION 103**

## SECTION 104

### SITE PREPARATION AND RESTORATION

#### **PART 1 - GENERAL**

##### **1.01 WORK INCLUDED**

- A. Documenting existing conditions at each site in the vicinity of the work.
- B. Site preparation shall consist of all clearing, stripping, demolition and related work necessary to prepare the project site for construction operations.
- C. Removal of all surface improvements (fences, hardscape, etc.) and landscaping shall be thoroughly coordinated prior to the start of work with the City Engineer and restored in-kind after the completion of construction activities.
- D. No open burning of debris, lumber, or other scrap will be permitted.
- E. Trees and vegetation shall be protected from damage incident to site preparation and construction operations by the erection of barriers or by such other means as the circumstances require.
- F. Contractor shall also implement the requirements of Special Provisions SP 2 (A), SP 16 and SP 17, "Existing Site Conditions", "Contractor's Use of Premises/Site Appearance" and "Preservation and Restoration of Property", respectively.

##### **1.02 EXISTING SITE CONDITIONS**

Existing site surface conditions consist of pavement, concrete curb and gutter, landscaping, vegetation including flowering plants and lawns, bushes, trees, concrete and paver hardscape, wood and metal fences, and debris. In some instances, building or other structures exist one or near the sewer main.

#### **PART 2 - PRODUCTS**

(None)

#### **PART 3 - EXECUTION**

##### **3.01 DOCUMENT EXISTING CONDITIONS**

Prior to the start of work on the site, Contractor shall document existing site conditions at and in the vicinity of the work and along access routes, with an emphasis on identifying cracks or other existing damage to existing improvements. The documentation shall consist of photographs and/or videos and the locations shall be clearly identified.

##### **3.02 DEMOLITION**

Remove existing facilities where required to perform the work. Demolition and removal of existing improvements, public or private, shall only be performed to the extent necessary to accommodate the work in conformance with the notes and details shown on the plans. No improvements shall be removed unnecessarily.

### **3.03 CLEARING**

Clearing shall consist of the trimming and cutting of trees, and the removal of downed timber, shrubs, grasses, debris and rubble which will obstruct or otherwise impede construction operations. Trimming or cutting of any tree, and removal of any landscaping, shall be only with prior approval of the City Engineer.

### **3.04 PRESERVATION OF PROPERTY**

- A. The project area shall be cleared only to the extent necessary to accommodate the work in conformance with the notes and details shown on the Plans. Trees or growth shall not be trimmed back unnecessarily. Attention is directed to Section 3.04 of this Section of the Specifications, regarding the protection of trees.
- B. Contractor shall take extreme care not to damage shrubs, trees, fences, irrigation systems and other improvements of adjacent property owners.
- C. All existing improvements (including landscaping) not specifically designated on the Plans to be removed or relocated shall remain in their original condition and location undisturbed. However, upon written permission by the Engineer, existing improvements may, for the convenience of the Contractor, and at his expense, be removed and temporarily relocated during construction and shall be replaced or reconstructed in their original location in as good or better condition as when the Contractor entered upon the work site.

### **3.05 PLANT AND TREE PROTECTION**

- A. No cutting of any part of City trees, including roots, shall be done without approval of the City Engineer.
- B. No cutting of any part of private trees, including roots, shall be done without approval of the City Engineer.
- C. Protect all existing plants and trees at all times from damage by men and equipment. Repair all minor damage to existing trees by using a licensed tree surgeon or other personnel approved by the Engineer. Remove such trees permanently disfigured or killed, including roots from the site and replace each such tree or trees with equal sized trees if possible, or reimburse the owner the cost if such replacement is not possible. The Engineer shall be the sole judge of the condition of any tree.

### **3.06 DEMOLITION OF SURFACE IMPROVEMENTS**

- A. Removal of sidewalks, curbs and gutters, driveways, concrete slabs and pavement if necessary shall be in accordance with the provisions of Section 15-3 of the Caltrans Standard Specifications. Curbs, gutters, sidewalks, driveways, slabs and pavement shall be removed by full depth saw cut to the nearest joint from the lines shown on the Plans or as directed by the Engineer.
- B. Where the Plans indicate pipeline construction under existing asphalt pavement or replacement of existing asphalt pavement, the existing pavement shall be removed and disposed of off-site.

### **3.07 REMOVAL OF DEBRIS**

- A. All demolished and cleared material shall become the property of the Contractor and shall be legally disposed of by the Contractor.

- B. Removed concrete shall be legally disposed of off the right-of-way at a location provided by the Contractor. Demolished concrete shall not be buried in structure backfill areas.

**3.08 DISPOSAL**

Dispose of demolished materials, soil, strippings, and other materials offsite.

**PART 4 - MEASUREMENT AND PAYMENT**

Full compensation for conforming to the requirement of this section shall be considered as included in the contract unit prices paid for various items of work requiring site preparation and restoration "in-kind", and no additional compensation will be allowed therefore.

**END OF SECTION 104**

## SECTION 105

### VAULT REHABILITATION

#### PART 1 – GENERAL

##### 1.01 WORK INCLUDED

- A. This specification covers the work necessary to rehabilitate existing vaults by lining.

#### PART 2 – PRODUCTS

##### 1.01 MANHOLE LINER

- A. Existing vaults shall be lined with a 2-part composite liner consisting of a restoration mortar and an epoxy coating. The restoration mortar shall be used to restore structural integrity and seal rough, deteriorated surfaces. It shall be applicable for mortar lined manholes. The epoxy coating shall be used as a topcoat on top of the restoration mortar to provide added toughness and improved chemical resistance. Product shall be Madewell Mainstay ML-72 Sprayable Microsilica Restoration Mortar and Mainstay DS-5 High Build Epoxy Coating or approved Equal.
- B. Existing concrete manholes shall be lined with the epoxy coating specified above only (Mainstay DS-5 High Build Epoxy Coating or approved Equal).
- C. Material Substitution - Materials specified are those which have been evaluated for the specific service. The Madewell Mainstay ML-72 Sprayable Microsilica Restoration Mortar and Mainstay DS-5 High Build Epoxy Coating products, or equal, are listed to establish a standard of quality. Standard products of manufacturers other than those specified may be accepted when it is proved to the satisfaction of the Engineer they meet Standard Specifications requirements, are equal in composition, durability, usefulness, and convenience for the purpose intended. Substitution will be considered provided the following minimum conditions are met:
- The proposed lining system shall have a dry film thickness equal to or greater than that of the specified system.
  - The proposed lining system shall employ an equal number of coats.
  - The proposed lining system shall employ coating of the same generic type.
  - The proposed lining system shall have been successfully used in 10 similar projects, and at least three years old, where lining has been applied to similar exposure and application.
  - All requests for substitution shall carry full descriptive literature and directions for application, along with complete information, generic type and non-volatile content by volume. Proof of meeting SSPWC Section 500- 2 requirements shall also be submitted to the Engineer for review.



- If all appears to be in order, the Engineer may require that the Contractor provide certified laboratory data sheets showing the proposed substitute. Testing shall have been performed by an independent testing laboratory satisfactory to the Engineer and all costs incurred in the testing program shall be borne by the Contractor. The Engineer shall be sole and final judge of the acceptability of any proposed substitution. Requests for substitution must be approved in writing.
  - Both manufacturer and installer of the elastomeric polyurethane shall warrant its lining for five years against any type of failure due to defects in material and application.
- C. All colors shall be selected by the City. The Contractor shall submit samples to the Engineer for approval. The Contractor shall match approved colors and samples.

## **PART 3 – EXECUTION**

### **1.02 MANHOLE LINER APPLICATION**

#### **CONCRETE VAULTS:**

- A. Prepare surface of concrete vault to be lined to remove all unsound material, old coatings, adhesives, contaminants, dirt, grease, debris, etc. Removal of contaminants may be performed by any effective combination of detergent scrubbing, pressure washing, water blasting, or abrasive blasting.
- B. Additional surface preparation, mixing, and application shall be in accordance with manufacturer's recommendations. Vault surface shall be primed with an epoxy primer (Madewell 927 or approved equal).

### **1.03 TESTING AND INSPECTION**

- A. Visual
1. Coating shall be uniform in color. The coating shall be visually inspected and found to be free of blisters, cracks, pinholes, missed areas and excessive roughness.
  2. Sags and runs shall be kept to a minimum. Excessive runs can be sanded smooth and overcoated as recommended by the Manufacturer.
- B. Visual
3. Coating shall be uniform in color. The coating shall be visually inspected and found to be free of blisters, cracks, pinholes, missed areas and excessive roughness.
  4. Sags and runs shall be kept to a minimum. Excessive runs can be sanded smooth and overcoated as recommended by the Manufacturer.
- C. Coating Thickness
1. The coating thickness shall be measured using a wet film thickness gage. At a minimum, the thickness shall be measured after completion of every section in continuous spray operations and for every 50 ft<sup>2</sup> of sprayed area, with a minimum of one measure per section, in field spray and hand application projects. The dry film coating thickness shall be tested using a properly calibrated magnetic pull off or

eddy current equipment after completion of each section. In either measure, if the thickness of the coating is below the minimum specified millage in any location, then adjustments must be made to the spray system to account for this, as recommended by the Manufacturer.

D. Holiday Testing

1. Holiday testing will be conducted on the completed coating after cure and/or 24 hours, whichever is less, using a high voltage spark test in accordance with NACE Standard RP-0188. Spark Testing shall be witnessed by inspection or by another appropriate person
2. Coating shall be at 75% or greater of its fully cured hardness value prior to holiday testing.
3. Coating thickness used for holiday detection shall be the minimum specified 80 mils.
4. All holidays shall be plainly marked immediately after detection and shall be repaired in accordance with Manufacturer recommendation.
5. Holiday testing will be performed in such a way as to mitigate possible damage to the coating by performing as few of passes as required over the coating.

E. Coating Thickness

1. The coating thickness shall be measured using a wet film thickness gage. At a minimum, the thickness shall be measured after completion of every section in continuous spray operations and for every 50 ft<sup>2</sup> of sprayed area, with a minimum of one measure per section, in field spray and hand application projects. The dry film coating thickness shall be tested using a properly calibrated magnetic pull off or eddy current equipment after completion of each section. In either measure, if the thickness of the coating is below the minimum specified millage in any location, then adjustments must be made to the spray system to account for this, as recommended by the Manufacturer.

F. Holiday Testing

1. Holiday testing will be conducted on the completed coating after cure and/or 24 hours, whichever is less, using a high voltage spark test in accordance with NACE Standard RP-0188. Spark Testing shall be witnessed by inspection or by another appropriate person
2. Coating shall be at 75% or greater of its fully cured hardness value prior to holiday testing.
3. Coating thickness used for holiday detection shall be the minimum specified 80 mils.
4. All holidays shall be plainly marked immediately after detection and shall be repaired in accordance with Manufacturer recommendation.
5. Holiday testing will be performed in such a way as to mitigate possible damage to the coating by performing as few of passes as required over the coating.

**PART 4 – MEASURE AND PAYMENT**

Included in Section 100 of these Technical Specifications.

**END OF SECTION 105**

## **SECTION 106**

### **SEWAGE BYPASSING**

#### **PART 1 – GENERAL**

##### **1.01 DESCRIPTION**

This specification covers the work necessary to install temporary sewage bypassing systems needed to dewater the sewers for rehabilitation of existing sewer vault facilities while maintaining continuous sewer service. Trunk sewer flows shall be pumped around the work area or diverted with flow through plugs. The system shall include all necessary pumps, power sources, plugs, appurtenances, and bypass piping necessary to maintain flows and services.

#### **PART 2 – PRODUCTS**

- a. A mandatory field meeting shall be conducted to discuss the traffic control prior to design and submittal of the traffic control plan and the sewage bypass pumping plan. The meeting shall be attended by the Contractor (foreman, project manager, and person in charge of bypass pumping), the Engineer, the City and County. Based on the field meeting, submit a bypass pumping plan for each location at least twenty (20) working days prior to sanitary sewer facility rehabilitation work. The CONTRACTOR'S plan for the sewer bypassing system shall be approved by the Engineer and County before the CONTRACTOR proceeds to install the system. Include the following documents:
  - Site Drawings prepared in conjunction with the traffic control plans and shown on the same drawings as the traffic control plans. The drawings shall include the staging area for the pumps and power sources, location of suction and discharge piping, and location and type of sewer plugs.
  - Calculations to support the pump and pipe size selection, including plots of the system and pump curves. Calculations shall be prepared and stamped by a licensed California Civil or Mechanical Engineer.
  - Emergency Response Plan to be followed in the event of a failure of the sewage bypassing system.
  - Operation Plan that describes how the system will be monitored and controlled.
- b. Materials: Pumps, piping, and appurtenances shall be suitable for use with sewage and be suitable for the design pressures. Plugs shall include tethers. All pumps and their power sources shall have sound-attenuated housing, mufflers, and any equipment required to minimize the equipment operating noise.

#### **PART 3 - EXECUTION**

The pumped sewage shall be in an enclosed hose or pipe that is adequately protected from traffic and shall be redirected into a sanitary sewer system. Dumping or free flow of sewage on private property, gutters, streets, sidewalks, or into storm sewers is prohibited.

Bypassing shall be done in such a manner as not to damage private or public property or create a nuisance or public menace. The CONTRACTOR shall take all necessary precautions including constant monitoring of bypass system to assure that private residences or properties are not subjected to a sewage backup or spill. The CONTRACTOR shall be liable for all cleanup, damages, and resultant fines in the event of a spill.

Place Type II Barricades with flashers around Pumps and above ground bypass piping at a spacing of no more than 50 feet.

If residential building sewers are disconnected from the main, advise the residents to reduce flow and monitor the building sewer. Pump out the building sewer as needed to assure the capacity is not exceeded, not less than once a day. Provide backup pumping capacity equal to at least the design flow. Backup pump(s) shall be installed on the bypass piping systems and connected to the power source, ready for use if the primary pump(s) fail.

Leakage Testing: Prior to activating sewage pump, the bypassing systems shall be successfully pressure tested with potable water at a pressure equal to at least 125 percent of the maximum working pressure for a period of at least twenty minutes with no leakage. Testing with a gas will not be permitted. Tests shall be conducted in the presence of the City's and County's inspector. Provide at least forty-eight (48) hours' notice to the inspector.

The CONTRACTOR shall notify the ENGINEER twenty-four (24) hours prior to commencing the sanitary sewer bypass pumping operation. (The log shall include the name of the bypassing supervisor, pump r.p.m., manhole levels, unusual pipe conditions, etc.)

The CONTRACTOR shall continuously monitor the bypass pumping system and manholes upstream of the bypass to verify that it is operating properly and not leaking. The Contractor shall keep a log of pumping operations and note any unusual conditions and corrective measures therein.

The CONTRACTOR shall maintain the bypass operations until the work is approved by the City.

After the permanent sewer work is completed, tested and approved by the City, restore the flow to the permanent sewer, dismantle and remove the bypass system, and repair any damage to streets and landscaping. Shallow, plated trenches or flow through ramps shall be used for bypass piping at intersections per approval by the City. Repair street and sidewalk, and restore pavement markings damaged constructing trenches in accordance with the Standard Specifications and details of the City.

#### **PART 4 - Measurement and Payment**

Included in Section 100 of these Technical Specifications.

**END OF SECTION 106**