

CITY OF ST. HELENA
1480 Main Street, St. Helena, CA 94574

CONSTRUCTION SERVICES AGREEMENT

Job Name: City of St. Helena
Waste Water Treatment Plant
Emergency Levee Repair and Upgrade

Agreement No. PW 2017

DATE: AUGUST 1, 2017

1. IDENTIFICATION OF CONTRACTOR:

Gregory Equipment Inc.
13279 5 Gs Lane
Redding, CA. 96003

2. SCOPE OF THE WORK

See Scope of Work attached as Appendix A.

3. COMPENSATION FOR WORK. Contractor's total compensation for the Work performed under this Agreement (**Contract Sum**) is **\$75,755.00** to be paid as (**check one**): (1) lump sum; (2) lump sum with progress payments; (3) per a time and materials basis (force account), up to a guaranteed not-to-exceed amount of **\$75,755.00**. All payments (**check one**): shall shall not be subject to a five percent (5%) retention.

4. SCHEDULE OF PERFORMANCE FOR THE WORK. Contractor shall commence and complete the Work by the following dates:

Commencement Date shall be on the date established in the Notice to Proceed. Owner reserves the right to modify or alter the Commencement Date of the Work.

Substantial Completion Date: Within 90 calendar days of Commencement Date.

Final Completion Date: Within 120 calendar days of Substantial Completion.

4.01 Liquidated Damage Amounts.

A. Liquidated damages do not apply to this contract.

5. TERMS AND CONDITIONS.

5.01 Contractor shall perform the Work in accordance with the terms and conditions of this Agreement and the following attachments (together, **Contract Documents**):

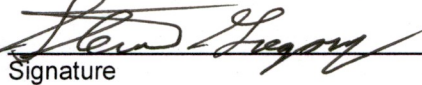
- A. Appendix A – Scope of Work and Technical Specifications
- B. Appendix B – General Conditions
- C. Appendix C – Insurance
- D. Appendix D – Construction Performance Bond
- E. Appendix E – Construction Labor and Materials Payment Bond

5.02 The Contract Documents are the sole and exclusive provisions that govern the Work described herein. Any provision contained in any purchase order issued in connection with this Agreement or the Work described herein shall be null and void and shall have no force or effect.

5.03 Agreement number must appear on all invoices and correspondence. Send invoices in duplicate immediately upon performance of Work ordered hereon to:

City of St. Helena, 1480 Main Street, St. Helena, CA 94574

CONTRACTOR: Gregory Equipment Inc.


Signature

Steve Gregory CFO
Print Name & Title

8-1-17
Date

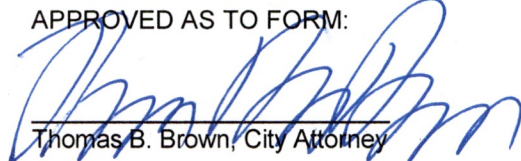
OWNER: City of St. Helena


Signature

ERICA AHMANN SMITHIES, INTERIM
Print Name & Title
CITY MANAGER / PW DIRECTOR / CITY ENGINEER

7/25/17
Date

APPROVED AS TO FORM:


Thomas B. Brown, City Attorney

APPENDIX A

SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

SECTION 1 DEFINITIONS

The following terms as used in any agreement of which these General Provisions are a part are defined as follows:

- 1-1.01** Agreement: The Agreement between the City and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents, sometimes referred to as the Project Agreement or the Contract.
- 1-1.02** Base: A layer of specified material of planned thickness placed immediately below the pavement or surfacing.
- 1-1.03** Base Material: The material in excavation or embankments underlying the lowest layer of subbase, base, pavement, surfacing or other specified layer which is to be placed.
- 1-1.04** Bid Package: All of the documents listed as comprising the entire Bid Package as specified in the Instructions to Bidders and representing the full set of documents made available to bidders on the Project.
- 1-1.05** Bridge: Any structure, with a bridge number, which carries a utility facility, or railroad, highway, pedestrian or other traffic, over a water course or over or under or around any obstruction.
- 1-1.06** Caltrans: The Department of Transportation of the State of California, as created by law.
- 1-1.07** Change Order: An Amendment to the Agreement, the Project Plans, Technical Specifications or other Contract Documents made in accordance with Section 3, Control of Work and Material and Changes in Work, of the General Provisions hereof.
- 1-1.08** City: City of St. Helena.
- 1-1.09** Conduit: A pipe or tube in which smaller pipes, tubes or electrical conductors are inserted or are to be inserted.
- 1-1.10** Contract Documents: All those documents listed in the Project Agreement as comprising the entire agreement between the City and the Contractor.
- 1-1.11** Contractor: The successful bidder for the Project and party to the Project Agreement with the City as specified in the Project Agreement.

- 1-1.12** Culvert: Any structure, other than a bridge, which provides an opening under a roadway for drainage or other purposes.
- 1-1.13** Days: Unless otherwise specified in the Contract Documents, days mean working days.
- 1-1.14** Designer: The person or persons so specified on the Technical Specifications and/or Project Plans.
- 1-1.15** Detour: A temporary route for traffic around a closed portion of a road.
- 1-1.16** Divided Highway: A highway with separated traveled ways for traffic, generally in opposite directions.
- 1-1.17** Engineer: The City's authorized representative for administration and overall management of the Project Agreement and Work. The Engineer is the official point of contact between the City and the Contractor, and is also known as the "City Engineer".
- 1-1.18** Frontage Road: A local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.
- 1-1.19** Grading Plane: The surface of the basement material upon which the lowest layer of subbase, base, pavement, surfacing or other specified layer is placed.
- 1-1.20** Highway: The whole right of way or area which is reserved for and secured for use in constructing the roadway and its appurtenances.
- 1-1.21** Laboratory: The established laboratory of the Materials and Research Department of the Department of Transportation of the State of California or laboratories authorized by the Engineer to test materials involved in the contract.
- 1-1.22** Manual on Uniform Traffic Control Devices: The California Manual on Uniform Traffic Control Devices, latest edition, Caltrans.
- 1-1.23** Median: That portion of a divided highway separating the traveled ways for traffic in opposite directions including inside shoulders.
- 1-1.24** Office of Structure Design: The Office of Structure Design as part of the California Department of Transportation. When the specifications require working drawings to be submitted to the Offices of Structure Design, the drawings shall be submitted to: Office of Structure Design, Documents Unit, Mail Station 9-4/4I, 1801 30th Street, Sacramento, CA 95816, Telephone (916) 227-8252.
- 1-1.25** Pavement: The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.
- 1-1.26** Processing: Any operation or operations of whatever nature and extent required to produce a specified material.
- 1-1.27** Project: The Pope Street Bike Lane Installation Project as described in the Technical Specifications and Project Plans.

- 1-1.28 Project Inspector: The party or parties charged by the City with inspecting the Work for compliance with the requirements of the Contract Documents and applicable laws and regulations. The Project Inspector acts under the direction of the City and shall coordinate with the Public Works Department as directed by the City in accordance with the Contract Documents.
- 1-1.29 Project Plans: The primarily graphic detailed requirements concerning the Project contained in the Bid Package and any addenda to the Project Plans signed by authorized City representatives and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the City and the Contractor in accordance with the requirements of the Contract Documents.
- 1-1.30 Roadbed: The roadbed is that area between the intersection of the upper surface of the roadway and the side slopes or curb lines. The roadbed rises in elevation as each increment or layer of subbase, base, surfacing or pavement is placed thereon. Where the medians are so wide as to include areas of undisturbed land, a divided highway is considered as including 2 separate roadbeds.
- 1-1.31 Roadway: That portion of the highway included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures, and other features necessary to proper drainage and protection.
- 1-1.32 Shoulders: The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.
- 1-1.33 Special Provisions: The special provisions set forth conditions or requirements peculiar to the Work and supplementary to the General Provisions.
- 1-1.34 Standard Specifications: The directions, provisions and requirements contained in the 2015 Caltrans Standard Specifications.
- 1-1.35 Subbase: A layer of specified material of planned thickness between a base and the basement material.
- 1-1.36 Subcontractor: A person, firm or corporation that is obligated as a party to a contract with the Contractor to perform part of the Project work. For purposes of these General Provisions Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Project Work according to the Technical Specifications and/or Project Plans.
- 1-1.37 Subgrade: That portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of any other material is placed.
- 1-1.38 Substructure: All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wingwalls of bridges shall be considered as parts of the substructure.
- 1-1.39 Superstructure: All that part of the bridge except the bridge substructure.

- 1-1.40** Surfacing: The uppermost layer of material placed on the traveled way, or shoulders. This term is used interchangeably with pavement.
- 1-1.41** Technical Specifications: The detailed Project requirements contained in the Bid Package and any addenda to the Technical Specifications signed by authorized City representatives and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the City and the Contractor in accordance with the requirements of the Contract Documents.
- 1-1.42** Traffic Lane: That portion of a traveled way for the movement of a single line of vehicles.
- 1-1.43** Traveled Way: That portion of the roadway for the movement of vehicles, exclusive of the shoulders.
- 1-1.44** Work: The furnishing of all equipment, tools, apparatus, facilities, material, labor and skill necessary to perform and complete in a good and workmanlike manner the Project as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.
- 1-1.45** Written Notice: Will be deemed to have been duly served for purposes of these General Provisions and any agreement of which they are a part if delivered in person to the individual or to a member of the firm or to any office of the corporation for whom the notice is intended, or if sent by mail or by email to the last known business address or email address known to the party giving notice. Unless otherwise specified in the Contract Documents, the last known address of the Contractor shall be that listed in the Contractor's completed Proposal and Schedule of Bid Prices.

SECTION 2 SCOPE OF WORK

- 2-1.01** Documents Furnished by City. The City will furnish Appendix A in a PDF format to the Contractor.
- 2-1.02** Ownership of Documents Furnished by City. All documents furnished by the City, including, but not limited to, the Technical Specifications, Project Plans, and any copies, are the property of the City. Documents furnished by the City may not to be used on any other work. All documents furnished by the City must be returned to City upon completion of the Work.
- 2-1.03** Technical Specifications and Project Plans.
- a. The Technical Specifications are complementary and intended to mutually describe the Work necessary to complete the Project in accordance with the Contract Documents.
 - b. The Contractor must furnish items necessary for the operation of equipment depicted in the Technical Specifications that are suitable to allow such equipment to function properly at no extra charge.
 - c. The Contractor must notify the Engineer as soon as possible of any apparent errors or inconsistencies, including, but not limited to, typographical or notational errors in the Project Technical Specifications, and/or in work done by others affecting the Work. The Engineer will issue instructions concerning any such apparent errors or inconsistencies. If the Contractor proceeds with Work impacted by apparent errors or inconsistencies without instructions from the Engineer, the Contractor shall do so at its sole risk and shall have all of the obligations and the City shall have all of the rights and remedies specified in Section 9 concerning any resulting damage or defect.
 - d. The General Provisions apply with equal force to all of the Work, including extra work authorized by the Engineer in accordance with the Contract Documents. The Contractor must submit any required shop diagrams and/or drawings by the times and in the quantities indicated in the Technical Specifications. Any such shop diagrams and/or drawings must show completely the Work to be done, expanding on the Project Plans concerning details not previously shown, field conditions and the condition of the Work. Engineer review of such shop diagrams and/or drawings will concern conformance with the requirements of the Contract Documents only. The Engineer assumes no responsibility for the correctness or accuracy of the dimensions or any other contents of any shop diagrams and/or drawings submitted by the Contractor. The Contractor must check all dimensions at the Work site. Shop diagrams and/or drawings must be clearly marked with the name of the Project and the name of the Contractor, subcontractor or supplier making the submittal, and must be stamped and signed by the Contractor and submitted under a signed transmittal letter from the Contractor certifying that all dimensions have been checked at the Work site. These requirements are mandatory. The Engineer will not review shop diagrams and/or drawings that do not satisfy these requirements. The Contractor will be responsible for any and all discrepancies between dimensions of the actual Project site and/or Work and those shown on shop diagram and/or drawings submitted by the Contractor, and for any other errors contained in or resulting from such shop diagrams and/or drawings, including, but not limited to, errors in material and/or equipment quantities and any resulting errors, delays or additional cost in the performance of the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 9, Remedies and Disputes, concerning any discrepancies or errors in shop diagrams and/or drawings submitted by the Contractor, and concerning any resulting errors, delays or additional costs in the performance of the Work.

2-1.04 Pre-Construction Conference. Prior to the issuance of the Notice to Proceed, a pre-construction conference will be held at the Office of the Public Works Department for the purpose of discussing with the Contractor the scope of work, Contract drawings, specifications, existing conditions, materials to be ordered, equipment to be used, and all essential matters pertaining to the prosecution of and the satisfactory completion of the project as required. The Contractor's representative at this conference shall include all major superintendents for the work and may include major subcontractors.

SECTION 3 CONTROL OF WORK AND MATERIAL AND CHANGES IN THE WORK

3-1.01 Engineer's Status. The Engineer will administer the Project in accordance with the Contract Documents. After execution of the agreement and issuance of the Notice to Proceed, all correspondence and/or instructions concerning the Project between the Contractor and/or City shall be forwarded through the Engineer. Except as otherwise provided in the Contract Documents, the Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, or procedures or for safety precautions in connection with the Work. The Engineer, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Engineer will also have the authority to require inspection or testing of the Work.

3-1.02 Designer's Status. The Designer will advise the Engineer concerning decisions on all claims of the Contractor and all other matters relating to the execution and progress of the Work or the interpretation of the Contract Documents. The Designer will also advise the Engineer concerning Work that does not conform to the Contract Documents. Whenever, in the Designer's opinion, it is necessary or advisable in accordance with the Contract Documents, the Designer may recommend to the Engineer inspection or testing of the Work, whether or not such Work is then fabricated, installed or completed.

3-1.03 Inspection and Testing of Work and Material.

- a. The City, the Engineer, the Designer and their representatives will have access to the Work at all times wherever it is in preparation or progress. The Contractor must provide proper facilities for such access and for inspection. The Contractor shall furnish the Engineer a list of the Contractor's sources of materials and the locations at which those materials will be available for inspection. The list shall be furnished to the Engineer in sufficient time to permit inspecting and testing of materials to be furnished from the listed sources in advance of their use. Within three (3) business days of receipt of the list, the Engineer may inspect, sample or test materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until the Engineer is assured by the Contractor of the cooperation and assistance of both the Contractor and the supplier of the material. The Contractor shall assure that the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled or tested. Adequate facilities shall be furnished free of charge to the Engineer to make the necessary inspection. The City assumes no obligation to inspect materials at the source of supply. It is understood that the inspections and tests if made at any point other than the point of incorporation in the Work in no way shall be considered as a guaranty of acceptance of the material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by the City shall not relieve the Contractor or the Contractor's suppliers of responsibility for quality control.
- b. The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Designer or Engineer. The Contractor shall be responsible for controlling the quality of the material entering the Work and of the Work performed, and shall perform testing as necessary to ensure control. The test methods used for quality control testing shall be as determined by the Contractor and this Agreement. The results of the testing shall be made available to the Engineer upon request. These tests are for the Contractor's use in controlling the Work and will not be accepted for use as acceptance tests. Full compensation for

performing quality control tests and making the results available to the Engineer shall be considered as included in the Contract Prices and no additional compensation will be allowed therefor.

- c. If the Engineer, the Technical Specifications, or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must give the Engineer timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any work subject to such testing that is covered up without timely notice to the Engineer or without the approval or consent of the Engineer must, if required by the Engineer, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 9 of these General Provisions concerning any work subject to testing that is covered up without timely notice to the Engineer and that is not uncovered for examination at the Contractor's expense if required by the Engineer.
- d. Tests of materials or qualification tests required by the Contract Documents must be made in accordance with the Technical Specifications and the requirements of the California Building Standards Code, where applicable, as adopted by the City, and other applicable law. Copies of all testing reports shall be distributed as required in the Technical Specifications. The laboratory or inspection agency shall be selected by the City. The City will pay for all laboratory inspection service direct, and not as a part of the Contract. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.
- e. The City or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to be according to the Contract Documents, the City shall pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Engineer. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 9 of these General Provisions concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.
- f. The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the City consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 9 of these General Provisions concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the City has not consented to accept.
- g. Any work done beyond the lines and grades shown on the Project Plans or established by the Engineer, or any extra work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer unauthorized work shall be remedied, removed or replaced at the Contractor's expense.
- h. The inspection of the Work or materials shall not relieve the Contractor of any of the Contractor's obligations to fulfill the Agreement. Work and materials not meeting Agreement requirements shall be made good, and unsuitable Work or materials may be rejected, notwithstanding that the Work or materials have been previously inspected by the Engineer or that payment therefore has been given.

- i. Unless otherwise specified, all tests shall be performed in accordance with the methods used by Caltrans and shall be made by the Engineer or the Engineer's designated representative.
- j. The City has developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the Technical Specifications as California Tests. Copies of individual California Tests are available at the Transportation Laboratory, Sacramento, California, and will be furnished to interested persons upon request.
- k. Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

Properties	California Test
Relative Compaction	216 or 231
Sand Equivalent	217
Resistance (R-value)	301
Grading (Sieve Analysis)	202
Durability Index	229

- l. Whenever a reference is made in the Technical Specifications to a California Test by number, it shall mean the California Test in effect on the day the Agreement is signed on behalf of the City.
- m. Whenever the Technical Specifications provide an option between 2 or more tests, the Engineer will determine the test to be used.
- n. Whenever a reference is made in the Technical Specifications to a specification, manual or test designation either of the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual or test designation in effect on the day the Agreement is signed on behalf of the City. Whenever the specification, manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of those reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions in this Section, and shall not constitute a waiver of the City's right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by the Contractor at the Contractor's expense. The number of the samples and test specimens shall be entirely at the discretion of the Engineer. Unidentified metal products, such as sheet, plate and hardware shall be subject to the requirements of Section 55-1.02A(6), "Unidentified Stock Material" of the Standard Specifications.
- o. When requested by the Engineer, the Contractor shall furnish, without charge, samples of all materials entering into the Work, and no material shall be used prior to approval by the Engineer, except as provided in Section 3-1.04, "Certificates of Compliance." Samples of material from local sources shall be taken by or in the presence of the Engineer; otherwise, such samples will not be considered for testing.

3-1.04 Certificates of Compliance.

- a. Certificates of Compliance shall be furnished prior to the use of any materials for which the Technical Specifications require that a certificate be furnished. In addition, when so authorized in the Technical Specifications, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Technical Specifications. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.
- b. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Project Plans and Technical Specifications, and any material not conforming to the requirements will be subject to rejection whether in place or not.
- c. The City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.
- d. The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

3-1.05 Samples Furnished by the Contractor. The Contractor must furnish all samples for approval as directed in sufficient time to permit the Designer or Engineer to examine, approve and select samples before they are required by the progress of the Work. Portions of the Work for which samples are required and for which the Designer or Engineer has selected samples must be in accordance with such approved samples. Samples must be sent prepaid to the office of the Engineer or to such place as the Engineer may direct.

3-1.06 Materials and Substitutions.

- a. Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.
- b. If the Contractor submitted complete information to the Public Works Department for products proposed as equals in accordance with the bid package, and the City approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand or model number in the Technical Specifications or Project Plans. The City retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the City to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the City does not accept a proposed substitution, the Contractor must furnish the product specified in the Technical Specifications or Project Plans for the Contract Price, regardless of whether the product is specified by manufacturer's name, brand or model number, or otherwise.

3-1.07 Contractors Responsibility For The Work And Materials.

- a. Until the acceptance of the Work, the Contractor shall have the charge and care of the Work and of the materials to be used and shall bear the risk of injury, loss or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work, except as provided in Sections 6-1.16, "Public Convenience," and 5-1.11, "Relief From Maintenance and Responsibility." The Contractor shall rebuild, repair, restore, and make good all injuries, losses or damages to any portion of the Work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except for those injuries, losses, or damages that are directly and proximately caused by acts of the Federal Government or the public enemy. Where necessary to protect the Work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the roadway and erect those temporary structures that are necessary to protect the Work or materials from damage. The suspension of the Work from any cause whatever shall not relieve the Contractor of the responsibility for the Work and materials as herein specified. If ordered by the Engineer, the Contractor shall, at the Contractor's expense, properly store materials which have been partially paid for by the City or which have been furnished by the City. Storage by the Contractor shall be on behalf of the City and the City shall at all times be entitled to the possession of the materials, and the Contractor shall promptly return the materials to the site of the Work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.
- b. During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the City, or with the use of existing City facilities by the public. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the City or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the City or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the City. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 9 of these General Provisions concerning any failure by the Contractor to replace or re-execute Work using non-conforming materials, and/or to make good all work destroyed or damaged by such removal and/or execution.

3-1.08 Audit and Examination of Records. The City may examine and audit at no additional cost to the City all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until three years after final payment under the Agreement. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be

expended is in excess of \$10,000, this Agreement shall be subject to the examination and audit of the State Auditor, at the request of the City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

3-1.09 Advertising. No advertising signs of any kind may be displayed on the Work site, or on fences, offices or elsewhere adjacent to the Work site.

3-1.10 Project Schedule. Within 7 days of issuance of the Notice to Proceed, the Contractor must submit a schedule showing each task of Work, the sequence of each task, the number of days required to complete each task, and the critical path controlling the completion of the entire Work. The schedule must allow for the completion of the entire Work within the Time for Completion.

- a. City Review of Schedule. The City may review the Contractor's submitted schedule and may note any exceptions. The Contractor must correct any exceptions noted by the City within five (5) working days of being notified of the exceptions.
- b. Update of Schedule. After submission of a schedule to which the City has taken no exceptions, the Contractor must submit an updated schedule on a biweekly basis or as otherwise specified by the City until completion of the Work. The updated schedule must show the progress of Work as of the date specified in the updated schedule.
- c. Float. The schedule shall show early and late completion dates for each task. The number of days between these dates will be designated as "float". The Float will be designated to the Project and will be available to both the City and the Contractor as needed.
- d. Failure to Submit Schedule. If the Contractor fails to submit schedules within the time periods specified in this Section, or submit a schedule to which the City has taken uncorrected exceptions, the City may withhold payments to the Contractor until such schedules are submitted and/or corrected in accordance with the Contract Documents.
- e. Responsibility for Schedule. The Contractor will be solely and exclusively responsible for creating the schedule and properly updating it. The City may note exceptions to any schedule submitted by the Contractor. However, the Contractor will be solely responsible for determining the proper method for addressing such exceptions and the City's review of the schedule will not place scheduling obligation on the City.

3-1.11 Construction Staking. Where the Contract Documents require, the Contractor shall employ a licensed Land Surveyor to perform construction staking. Stakes and marks will be set by the Surveyor as the Engineer determines to be necessary to establish the lines and grades required for the completion of the Work.

- a. The Contractor will be responsible for coordinating performance of the Work with the Surveyor and for all costs associated with construction staking and layout.
- b. Contractor shall provide "cutsheets" for the Engineer to review and use in checking grades. Finished grades shall be within 0.01 feet in elevation and 0.03 feet horizontal layout of the grades as shown on the plans.
- c. Full compensation for Construction Staking shall be considered as included in the prices paid for the various items of Work involved, and no additional payment will be made therefore by the City.

3-1.12 Detours.

- a. The Contractor shall construct and remove detours and detour bridges for the use of public traffic as provided in the Special Provisions, or as shown on the Project plans or as directed by the Engineer. Payment for this Work will be made as set forth in the Special Provisions or at the contract prices for the items of Work involved
- b. The cost of repairing damage to detours caused by public traffic will be paid for as provided in this Section 3 of these General Provisions.
- c. When public traffic is routed through the Work, provision for a passageway through construction operations will not be considered as detour construction or detour maintenance, and this Work shall conform to and be paid for as provided in Section 6-1.16, "Public Convenience" of these General Provisions unless otherwise specified in the Special Provisions.
- d. Detours used exclusively by the Contractor for hauling materials and equipment shall be constructed and maintained by the Contractor at the Contractor's expense.
- e. The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for suspending the Work until the detours are in satisfactory condition for use by public traffic.
- f. Where the Contractor's hauling is causing such damage to the detour that its maintenance in a condition satisfactory for public traffic is made difficult and unusually expensive, the Engineer shall have authority to regulate the Contractor's hauling over the detour.

3-1.13 City Directed Change Orders. The City may at any time during the progress of the Work direct the Contractor by Change Orders, being any amendments to the Work or any of the Contract Documents, including, but not limited to the Technical Specifications, or Project Plans. Such amendments will in no way void the Agreement, but will be applied to amend the Contract Price, if such amendments affect the Contract Price or the Project schedule, or if such amendments affect the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the Change Order in accordance with this Section 3 of these General Provisions.

3-1.14 Writing Requirement. Change Orders and other related amendments to the Technical Specifications, the Project Plans, or other Contract Documents may be made only by a writing executed by authorized representatives of the City and the Contractor.

3-1.15 Contractor Proposed Change Orders. Unless the Engineer otherwise authorizes or the City and the Contractor otherwise agree, Change Order proposals submitted by the Contractor must be submitted to the Engineer no later than the time of the proposed change. The Engineer shall review the proposed Change Order and respond by acknowledging the contract change, or by supplying information and not acknowledging a Change Order, or by recommending other action. If the Engineer acknowledges the contract change, the Contractor shall submit a Change Order to the Engineer as set forth in this Section 3-1.15. Each Change Order submitted by the Contractor shall be accompanied by the following certification executed by an officer of Contractor:

I, _____, being the _____ of _____ (Contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached request for Change Order and know its contents, and said request for Change Order is made in good faith; that it is supported by truthful and accurate data; that the amount requested and the additional time requested accurately reflects the allowable expenses that would be incurred, and the time necessary, to

perform the Change Order; and further, that I am familiar with California Penal Code section 72 and California Government Code Section 12650, et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment, or other severe legal consequences.

3-1.16 All Change Orders. All proposed Change Orders must be submitted on completed Change Order forms provided in the Contract Documents. All such proposed Change Orders must itemize all cost impacts of the proposed Change Order and include a total price for that change order and the amended Contract Price that would become effective upon execution of the Change Order. All proposed Change Orders must specify any change in the Project schedule, or in any project milestone including, but not limited to, the Time for Completion, under the Change Order. It is understood that Change Orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, must be accomplished by the Time for Completion then in effect.

3-1.17 Change Order Pricing. Change Order pricing for all Change Orders, whether, additive, deductive, or both, will be governed by the following:

- a. Prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify prices.
- b. Cost impacts involving items for which the Contract Documents do not specify prices may be paid on a lump sum basis as approved by the City.
- c. For cost impacts involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the City, charges or credits for the Work will be paid on a time and materials basis in accordance with the following and subject to Caltrans Standard Specifications, provision 9-1.03, concerning allowable direct charges. The time and materials payment will be the sum of and limited to the direct and indirect costs for labor, materials, equipment and overhead calculated as follows:
 1. Labor: The Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the Work. The cost of labor utilized in performing the Work, whether the employer is the Contractor, a subcontractor or other entity engaged in the performance of the Work, will be the sum of the following:
 - Actual Wages: The actual wages paid will include any employer fringe benefit payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes. The actual wages and fringe benefits paid must be at the rates shown on the certified payroll documents submitted by the Contractor.
 - Labor Surcharge: The labor surcharge will be as set forth in the latest edition of the California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates". The labor surcharge will constitute full compensation for all payments imposed by State or Federal laws and for all other payments made to, or on behalf of, workers engaged in the performance of the Work, excluding the Actual Wages as defined above.
 - Fixed Markup: A fixed markup of 15% of the sum of the actual wages paid and the labor surcharge applicable to such actual wages, together with the actual wage and labor surcharge costs described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all labor for the Work.

2. **Materials:** Materials costs will be the direct costs for materials actually exhausted, consumed or entering permanently into the Work, plus a fixed markup of 15% of such direct materials costs, which, together with the direct cost of materials as described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all materials for the Work.
3. **Equipment:** All equipment used will be paid in accordance with the rates in subsection 9-1.04D entitled "Equipment Rental" of the Standard Specifications, which is made a part of this Contract, plus a fixed markup of 10% of such equipment rates, which, together with the equipment rates as described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all equipment for the Work.
4. Unless approved in writing in accordance with Section 3-1.14 of these General Provisions in advance of performance of the Work, any and all other cost impacts (including, but not limited to profit, bond premiums or fees, insurance premiums or fees, superintendent labor, clerical expenses, home office expenses, Work site office expenses, utility costs, permit costs, and licensing costs) involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the City, will constitute incidentals, full compensation for which will be deemed included in the markups for labor, material, and equipment specified above, and no additional compensation for such cost impacts will be allowed.

3-1.18 Liability Under Unapproved Change Orders. The Contractor will be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed Change Orders prior to issuance of an approved Change Order executed in accordance with this Section 3 of these General Provisions. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 9 of these General Provisions concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed Change Order before issuance of an approved Change Order executed in accordance with this Section 3 of these General Provisions.

3-1.19 Changes Subject to Contract Documents. Any changes in the Work and/or the Contract Documents pursuant to Change Orders and any other amendments issued in accordance with the Contract Documents, including this Section 3 of these General Provisions, will in all respects be subject to all provisions of the Contract Documents, including, but not limited to, the Technical Specifications and the Project Plans, except as modified by such Change Orders or amendments.

3-1.20 Change Order Disputes.

- a. **Disputed City Directed Change Orders.** If the Contractor disputes a City- Directed Change Order following a reasonable effort by the City and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the City, the Contractor must commence performing the Work consistent with the disputed Change Order within five (5) working days of the last meeting between representatives of the Contractor and the City to resolve the dispute, or within the time specified in the disputed City-Directed Change Order, whichever is later. In performing Work consistent with a disputed City-Directed Change Order pursuant to this Section 3-1.20 the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.
- b. **Disputed Contractor Proposed Change Orders.** If the City disputes a Contractor-Proposed Change Order, the City and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the

Contractor and the City. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed Change Order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the City and the Contractor concerning any Contractor-Proposed Change Order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-Proposed Change Order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

SECTION 4 TRENCHING AND UTILITIES AND PROJECT FACILITIES

4-1.01 The Construction Safety Orders of the Division of Occupational Safety and Health shall apply to all excavations.

- a. Detailed plans of protective systems for which the Construction Safety Orders require design by a registered professional engineer shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California, and shall include the soil classification, soil properties, soil design calculations that demonstrate adequate stability of the protective system, and any other design calculations used in the preparation of the plan.
- b. No plan shall allow the use of a protective system less effective than that required by the Construction Safety Orders.
- c. If the detailed plan includes designs of protective systems developed only from the allowable configurations and slopes, or Appendices, contained in the Construction Safety Orders, the plan shall be submitted at least 5 days before the Contractor intends to begin excavation. If the detailed plan includes designs of protective systems developed from tabulated data, or designs for which design by a registered professional engineer is required, the plan shall be submitted at least 3 weeks before the Contractor intends to begin excavation.

4-1.02 Excavation More Than Four Feet Deep. In accordance with California Public Contract Code Section 7104, if the Work involves excavation more than four feet deep the Contractor must promptly notify the City in writing before disturbing: (1) any material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; any subsurface or latent physical conditions at the Work site differing from those indicated; or, (2) any unknown physical conditions at the Work site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The City will promptly investigate any such conditions for which notice is given. If the City finds that the conditions do materially differ, or involve hazardous waste, and would cause a decrease or increase in the cost or time of performance of the Work, the City will issue a Change Order pursuant to Section 3 of these General Provisions. If a dispute arises between the City and the Contractor concerning whether the conditions materially differ, or involve hazardous waste, or cause a decrease of increase in the cost or time of performance, the Contractor will not be excused from any completion date provided in the Contract Documents, but shall proceed with all Work to be performed. The Contractor will retain all rights under contract or law pertaining to resolution of disputes and protests between contracting parties.

4-1.03 Excavation of Five Feet or More. In accordance with California Labor Code Section 6705, contractors performing contracts exceeding \$25,000 in cost and involving excavation five or more feet deep must submit for the City's acceptance, prior to excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation. The detailed plan shall include any tabulated data and any design calculations used in the preparation of the plan. Excavation shall not begin until the detailed plan has been reviewed and approved. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer.

4-1.04 Utility Relocation Costs.

- a. In accordance with California Government Code Section 4215, the City assumes the responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the Work site if such utilities are not identified by the City in the Technical Specifications and/or Project Plans. The City will compensate the Contractor for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities located at the Work site and not identified with reasonable accuracy in the Technical Specifications and/or Project Plans. The City will also compensate the Contractor for the cost of equipment on the Project necessarily idled during such work. The Contractor will not be assessed liquidated damages for Work completion delays caused by the City's failure to provide for removal or relocation of such main or trunkline utility facilities.
- b. Nothing in this Section 4-1.04 or the Contract Documents will be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Work site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Work site; provided, however, that nothing in this provision or the Contract Documents shall relieve the City from identifying main or trunklines in the Technical Specifications and/or Project Plans.
- c. Nothing in this Section 4-1.04 or the Contract Documents will preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.
- d. Nothing in this Section 4-1.04 or the Contract Documents will be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.
- e. If the Contractor while performing the Work discovers utility facilities not identified by the City in the Technical Specifications and/or Project Plans, the Contractor must immediately notify the City and utility in writing.
- f. Either the City or the utility, whichever owns existing main or trunkline utility facilities located on the Work site, shall have sole discretion to effect repairs or relocation work or to permit the Contractor to perform such repairs or relocation work at a reasonable price.

4-1.05 Utility and Non-Highway Facilities

- a. The Contractor shall protect from damage utility and other non-highway facilities that are to remain in place, be installed, relocated or otherwise rearranged.
- b. It is anticipated that some or all of the utility and other non-highway facilities, both above ground and below ground, that are required to be rearranged (as used herein, rearrangement includes installation, relocation, alteration or removal) as a part of the highway improvements comprising part of the Work will be rearranged in advance of construction operations. Where it is not anticipated that the rearrangement will be performed prior to construction, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing facilities that are to be rearranged will be indicated on the Project Plans or in the Special Provisions. Where a rearrangement is indicated on the Project Plans or in the Special Provisions, the Contractor will have no liability for the costs of performing the work involved in the rearrangement.

- c. The right is reserved to the City and the owners of facilities, or their authorized agents, to enter upon the highway right of way for the purpose of making those changes that are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in this Work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the Work being performed by the other forces. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and the Contractor shall make arrangements with the owner of those facilities for the coordination of the Work.
- d. Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the Project Plans or in the Special Provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the Project Plans or in the Special Provisions. The Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated on the Project Plans or in the Special Provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing Work that may damage any of the facilities or interfere with their service.
- e. If the Contractor cannot locate an underground facility whose presence is indicated on the Project Plans or in the Special Provisions, the Contractor shall so notify the Engineer in writing. If the facility for which the notice is given is in a substantially different location from that indicated on the Project Plans or in the Special Provisions, the additional cost of locating the facility will be paid for as provided in Section 3.
- f. If the Contractor discovers underground main or trunk lines not indicated on the Project Plans or in the Special Provisions, the Contractor shall immediately give the Engineer and the Utility Company written notification of the existence of those facilities. The main or trunk lines shall be located and protected from damage as directed by the Engineer, and the cost of that work will be paid for as extra work as provided in Section 3. The Contractor shall, if directed by the Engineer, repair any damage which may occur to the main or trunk lines. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as provided in Section 3. Damage due to the Contractor's failure to exercise reasonable care shall be repaired at the Contractor's cost and expense.
- g. Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to accommodate the highway improvement and the Project Plans and Technical Specifications do not provide that the facility is to be rearranged, the Engineer will provide for the rearrangement of the facility by other forces or the rearrangement shall be performed by the Contractor and will be paid for as provided in Section 3.
- h. When ordered by the Engineer in writing, the Contractor shall rearrange any utility or other non-highway facility necessary to be rearranged as a part of highway improvements comprising part of the Work, and that Work will be paid for as provided in Section 3.
- i. Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate the Contractor's construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the Project Plans or in the Special Provisions, the Contractor shall make whatever arrangements are necessary with the owners of the utility or other non-highway facility for the rearrangement and bear all expenses in connection therewith.

- j. The Contractor shall immediately notify the Engineer of any delays to the Contractor's operations as a direct result of underground main or trunk line facilities which were not indicated on the Project Plans or in the Special Provisions or were located in a position substantially different from that indicated on the Project Plans or in the Special Provisions, or as a direct result of utility or other non-highway facilities not being rearranged as herein provided (other than delays in connection with rearrangement made to facilitate the Contractor's construction operations or delays due to a strike or labor dispute). Compensation for the delay will be determined in conformance with the provisions in Section 3.

4-1.06 Work Site Offices. Any Work site office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such Work site office facilities shall be paid from and included in the Contract Price.

4-1.07 City Rights of Access and Ownership. The City and its authorized representatives will at all reasonable times while such office facilities are located at the Work site (including, at a minimum, all times during which the Work is performed), have access to any such Work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the City and its authorized representatives, neither the Contractor nor its privities shall have a reasonable expectation of privacy pursuant to the Fourth Amendment to the Unites States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such Work site facilities will be deemed at all times to be City property subject to inspection and copying by the City and its authorized representatives at all reasonable times while such facilities are located at the Work site (including, at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the City's rights of access and/or ownership pursuant to this Section 4 will constitute a material breach of the Agreement subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

SECTION 5

PROSECUTION AND PROGRESS OF THE WORK

5-1.01 Beginning of Work.

- a. The Contractor shall begin Work within 10 calendar days after receiving notice to proceed from the City, and shall diligently prosecute the same to completion within the Time for completion specified in this Agreement.
- b. Should the Contractor begin Work in advance of receiving notice that this Agreement has been approved as above provided, any Work performed by the Contractor in advance of the date of approval shall be considered as having been done by the Contractor at the Contractor's own risk and as a volunteer unless the Agreement is approved.
- c. The delivery to the City for execution and approval of the Agreement properly executed on behalf of the Contractor and surety and all other required documents in accordance with the Agreement shall constitute the Contractor's authority to enter upon the Work site and to begin operations, subject to the Contractor's assumption of the risk of the disapproval of the Agreement, as above provided, and subject also to the following:
 1. The Contractor shall, on commencing operations, take all precautions required for public safety and shall observe all the provisions in the Contract Documents.
 2. In the event of disapproval, the Contractor shall at the Contractor's expense do that work that is necessary to leave the site in a neat condition to the satisfaction of the Engineer. If the Work done affects any existing road or highway, the Contractor shall at the Contractor's expense restore it to its former condition, or the equivalent thereof, to the satisfaction of the Engineer.
 3. All Work done according to the Agreement prior to its approval, will, when the Agreement is approved, be considered authorized Work and will be paid for as provided in the Agreement.
 4. The Contractor shall not be entitled to any additional compensation or an extension of time for any delay, hindrance or interference caused by or attributable to commencement of Work prior to the date on which the Agreement was approved by the City.

5-1.02 Liquidated Damages. Time is of the essence in the performance of this Agreement. The City and the Contractor agree that it will be difficult and/or impossible to determine the actual damage which the City will sustain in the event of the Contractor's failure to fully perform the Work or to fully perform all of the Contractor's obligations that have accrued pursuant to the Agreement by the Time for Completion. Accordingly, the City and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in accordance with the Construction Services Agreement included herein.

5-1.03 No Damage for Delay Beyond City and Contractor Control. The Contractor will not be held responsible for delays in performance of the Work caused by delay beyond the control of both City and Contractor, such as by strikes, lockouts, or labor disturbances that are not within the control of the Contractor to resolve, lack or failure of transportation, or acts of other government entities. This provision will not apply where the delay would not have occurred but for a previous Contractor

caused delay in the prosecution of the Work. The City will not be liable to the Contractor, any subcontractor or other entity engaged in the performance of the Work, any supplier, or any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays beyond the control of the City and the Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, earthquakes and acts of God or acts or neglect by utility owners or other contractors performing other work, or (ii) delays caused by the City, its officials, officers, employees, agents, or volunteers, or delays caused by the Engineer or the Designer or Engineer, which delays are reasonable under the circumstances involved and/or are within the contemplation of the City and the Contractor. An extension of the Time for Performance in an amount equal to the time loss due to such delay(s) will be the Contractor's sole and exclusive remedy for such delay(s).

5-1.04 No Damage for Contractor Caused Delay. Contractor shall not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents. Contractor may be eligible for additional compensation in excess of the Contract Price for delays caused by the City and/or its privities.

5-1.05 No Damage for Other Delay. Contractor will not be entitled to damages for delay to the Work caused by the following, which the City and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances:

- a. Exercise of the City's right to sequence the Work in a manner that would avoid disruption to the City and other contractors based on: (1) the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the City or any other governmental agency of competent jurisdiction of any government act or regulation, or (2) enforcement by the City of any provisions of the Agreement.
- b. Requests for clarification or information concerning the Contract Documents or proposed Change Orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed Change Orders or modifications, provided such clarifications or information or proposed Change Orders or modifications are processed by the City or its representatives in a reasonable time in accordance with the Contract Documents.

5-1.06 Delays Caused by the City and/or Its Privities. Either the City or the Contractor may propose a change in the Time for Completion for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City and the Contractor. Such proposed changes in the Time for Completion will constitute Change Order proposals subject to Section 3 of these General Provisions. In accordance with Section 3 of these General Provisions, the City and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing is in anticipation of cost impacts that may occur, but have not yet occurred, the City will be obligated to pay the Contractor for such anticipated impacts in accordance with the Agreement and any applicable, approved Change Orders only to the extent the Contractor actually incurs the anticipated cost impacts. Notwithstanding anything to the contrary in Section 3 of these General Provisions, the City and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the City and/or its privities subject to this Section 5-1.06. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

5-1.07 Weather Delays. Extensions of the Time for Completion due to weather will only be granted when inclement weather impacts and delays the controlling items of work.

5-1.08 Delay Claims. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.

5-1.09 Contractor Coordination of the Work.

- a. The City reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor shall at all times conduct the Work so as to impose no hardship on the City, others engaged in the Work or other contractors working at the Work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.
- b. If any part of the Work depends for proper execution or results upon the work of the City or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the City any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the City's or other contractor's Work as fit and proper.
- c. The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade shall be part of the Work except where stated otherwise.
- d. The Contractor will provide proper facilities at all times for access of the City, the Engineer, Designer, and other authorized City representatives to conveniently examine and inspect the Work.
- e. Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way by other forces within or adjacent to those limits, the Contractor shall cooperate with all the other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to the City to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.
- f. When 2 or more contractors are employed on related or adjacent work, or obtain materials from the same material source, each shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.
- g. Each contractor shall be responsible to the other for all damage to Work, to persons or property caused to the other by their operations, and for loss caused the other due to unnecessary delays or failure to finish the work within the time specified for completion.

5-1.10 Differing Site Conditions.

- a. During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Agreement or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work, are encountered at the site, the Contractor shall

promptly notify the City in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

- b. Upon written notification, the Engineer will investigate the conditions, and if the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work, an adjustment, excluding loss of anticipated profits, will be made and the Agreement modified in writing accordingly. The Engineer will notify the Contractor of the Engineer's determination whether or not an adjustment of the contract is warranted.
- c. No Agreement adjustment that results in a benefit to the Contractor will be allowed unless the Contractor has provided the written notice required in this Section 5-1.10.
- d. Any Agreement adjustment warranted due to differing site conditions will be made in accordance with the provisions in Section 3 of these General Provisions, "Changes in Work," except as otherwise provided.

5-1.11 Relief From Maintenance And Responsibility.

- a. Upon the request of the Contractor, the City may relieve the Contractor of the duty of maintaining and protecting certain portions of the Work, which have been completed in all respects in accordance with the requirements of the Agreement and to the satisfaction of the Engineer, and thereafter except with the Contractor's consent, the Contractor will not be required to do further Work thereon. In addition, such action by the City will relieve the Contractor of responsibility for injury or damage to those completed portions of the Work resulting from use by public traffic or from the action of the elements or from any other cause but not from injury or damage resulting from the Contractor's own operations or from the Contractor's negligence.
- b. However, nothing in this Section 5-1.11 providing for relief from maintenance and responsibility will be construed as relieving the Contractor of full responsibility for making good any defective Work or materials found at any time before the formal written acceptance of the entire Agreement by the City.

SECTION 6 CONTRACTOR RESPONSIBILITIES

- 6-1.01 Eligibility.** By executing the Agreement, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. To the full extent permitted by law the Contractor shall hold harmless and indemnify the City from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.
- 6-1.02 Supervision of the Work.** The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by subcontractors. The Contractor is charged with ensuring that all orders or instructions from the City, Engineer or Designer are disseminated to and followed by all subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the City, the Engineer, or the Designer may require the Contractor and/or subcontractors engaged in performance of the Work to attend a project meeting and the Contractor will attend, and ensure the attendance of any subcontractors whose attendance is required by the City and/or advisable in light of the matters to be addressed at the meeting.
- 6-1.03 Contractor's Superintendent.** The Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the City. The Contractor shall designate in writing before starting Work the superintendent who shall have the authority to represent and act for the Contractor. The authorized representative shall be present at the site of the Work at all times while work is actually in progress. When Work is not in progress and during periods when Work is suspended, arrangements acceptable to the Engineer shall be made for any emergency Work that may be required. Whenever the Contractor or the Contractor's authorized representative is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular Work in reference to which the orders are given. Any order given by the Engineer, not otherwise required by the specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing. The superintendent may not be changed without the consent of the City. The superintendent will represent the Contractor and all directions given by the City to the superintendent will bind the Contractor in accordance with the Agreement. Superintendent time included in Contractor's completed bid schedule and/or in approved Change Orders, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.
- 6-1.04 Competent Employees.** The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Work any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the City determines that a Contractor employee does not satisfy the requirements of this Section 6-1.04, upon notice from the City, the Contractor must ensure that employee performs no further Work and is no longer present at the Work site. Any such Contractor employee may not again be employed on the Work without City approval. If any subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the request of the Engineer, and that person shall not again be employed on the work.
- 6-1.05 Items Necessary for Proper Completion of the Work.** Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities and services necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.

6-1.06 Construction Reports. The Contractor must submit daily construction logs detailing the daily progress of the Work to the Engineer on a weekly basis when requested by the Engineer.

6-1.07 Subcontracting.

- a. By executing the Agreement, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and that any public money that may have been paid to a debarred subcontractor for the Work is returned to the City. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.
- b. The Agreement and the performance of the Work are subject to the requirements of the Subletting and Subcontracting Fair Practices Act codified at California Public Contract Code Section 4100 and following. If the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of 1 percent of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Agreement the Contractor subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Agreement, assessment of a penalty of up to 10 percent of the amount of the subcontract, and disciplinary action by the Contractors State License Board.
- c. No contractual relationship exists between the City and any subcontractor engaged in performance of the Work.
- d. Incorporation of Contract Documents. The Contractor must incorporate the Contract Documents in each contract with a subcontractor engaged in the performance of the Work. The Contractor will be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate project information to a subcontractor that results in improper submittals and/or work, or time or other impacts. The Contractor will have all of the obligations and the City will have all of the remedies that are specified in Section 9 of these General Provisions concerning any subcontracted work. Subcontracts shall also contain certification by the subcontractor that the subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted Work. Copies of subcontracts shall be available to the Engineer upon written request, and shall be provided to the Engineer at the time any litigation against the City concerning the project is filed.
- e. Coordination of Subcontract Work: The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.
- f. The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the work under the Contractor's control.

- g. The Contractor shall perform, with the Contractor's own organization, contract Work amounting to not less than 50 percent of the original total contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any designated "Specialty Items" performed by subcontract may be deducted from the original total contract price before computing the amount of Work required to be performed by the Contractor with the Contractor's own organization. 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 Agreement item bid price. When a portion of an item is subcontracted, the value of Work subcontracted will be based on the estimated percentage of the Agreement item bid price, determined from information submitted by the Contractor, subject to approval by the Engineer.
- h. Before Work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the Work to be subcontracted, the names of the subcontractors and the description of each portion of the Work to be subcontracted.
- i. Pursuant to the provisions of Section 6109 of the Public Contract Code, the Contractor shall not perform Work on a public works project with a subcontractor who is ineligible to perform Work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- j. When a portion of the Work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the subcontractor shall be removed immediately on the request of the City and shall not again be employed on the Work.
- k. The roadside production of materials produced by other than the Contractor's forces shall be considered as subcontracted. Roadside production of materials shall be construed to be production of aggregates of all kinds with portable, semi-portable or temporary crushing or screening, proportioning and mixing plants established or reopened for the purpose of supplying aggregate or material for a particular project or projects. The erection, establishment or reopening of the plants and the operation thereof in the production of materials for use on the Work shall conform to the requirements relating to labor set forth in these General Provisions and in the Special Provisions.

6-1.08 Not Used

6-1.09 Licenses/Permits. The Contractor must, without additional expense to the City, obtain all licenses, permits and other approvals required for the performance of the Work.

6-1.10 Not Used

6-1.11 Laws and Ordinances. The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the Technical Specifications or Project Plans is to be construed to permit Work not conforming to these codes:

- National Electrical Safety Code, U. S. Department of Commerce
- National Board of Fire Underwriters' Regulations
- California Building Standards Code as adopted by the City
- Manual of Accident Prevention in Construction, latest edition, published by
- A.G.C. of America
- Industrial Accident Commission's Safety Orders, State of California

- Regulations of the State Fire Marshall (Title 19, California Code of Regulation) and Applicable Local Fire Safety Codes
- Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.

6-1.12 Guaranty. The Contractor guarantees all of the Work for one year from the date the City accepts the Work. Upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the City. If the Contractor fails to make good any defects in the Work in accordance with this Section 6-1.12, in addition to any other available remedy under the contract or at law or equity, the City may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor, and/or call on the Contractor's maintenance bond for the cost of making good such defects and for the City's reasonable legal costs, if any, of recovering against the bond. The Contractor will remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the City.

6-1.13 Safety.

- a. In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the City nor its officials, officers, employees, agents, volunteers or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities engaged in the performance of the Work.
- b. Review and inspection by the City, the Designer or the Engineer, and/or other representatives of the City of the Contractor's performance of the Work will not constitute review of the adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the Work site is maintained and the Work is performed in a safe manner.
- c. The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the Work site is maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.
- d. Within ten (10) working days following notice of award the Contractor must submit to the City a copy of the Contractor's Safety Plan.
- e. The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 and following Sections of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.

6-1.14 Load Limitations.

- a. Unless expressly permitted in the Special Provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the Project.
- b. After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, portland cement concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 1,000 feet ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In those locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor, at the Contractor's expense, as directed by the Engineer.
- c. Within the limits of the Project and subject to the control of the Engineer, and provided that the Contractor, at the Contractor's expense, shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by the operations, the Contractor will be permitted to:
 1. Make transverse crossings of those portions of an existing public road or street that are within the highway right of way, with construction equipment that exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
 2. Make transverse crossings of treated bases, surfacing or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
 3. Cross bridge structures that are not open to public traffic and that are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the load limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures:
 - A. The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 28,000 pounds for single axles, (2) 48,000 pounds for tandem axles, nor (3) 60,000 pounds total gross load for single vehicles or 110,000 pounds total gross load for truck and trailer or semi-trailer combinations.
 - B. The loading on bridge structures due to 2 and 3 axle pneumatic-tired earthmovers shall not exceed that shown in the following table.
 - C. Allowable Construction Loading On Bridges for 2 and 3 Axle Earthmovers.

Spacing of Bridge Girders (center to center in feet)	Maximum Axle Loading (in pounds)
4	28,000
5	29,000
6	30,0
7	32,000
8	34,000
9	37,000
10 and over	40,000

Minimum axle spacing:

For 3-axle earthmovers

Axles 1 to 2 = 8 feet

Axles 2 to 3 = 20 feet

For 2-axle earthmovers

Axles 1 to 2 = 20 feet

4. Move equipment within the limits of the Project over completed or existing base, surfacing, pavement and structures, weather open to the public or not.
- D. Within the limits of the Project and subject to the condition that the Contractor shall repair, at the Contractor's expense, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment that exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the Project Plans.
- E. Should the Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the Agreement, in order to facilitate the Contractor's own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 130,000 pounds per single axle or pair of axles less than 8 feet apart, or above 330,000 pounds total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost and date are satisfactory to the Contractor, the Engineer will prepare a Change Order providing for the agreed upon alterations.

6-1.15 Public Convenience.

- a. The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of Work than can be prosecuted properly with due regard to the rights of the public.
- b. Unless otherwise provided in the Special Provisions, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces.
- c. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.
- d. Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the Work, and other forces will continue routine maintenance of existing systems.
- e. Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.
- f. Convenient access to driveways, houses, and buildings along the line of the Work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.
- g. The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered.
- h. Roadway excavation and the construction of embankments shall be conducted in such a manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic at all times; sufficient fill at culverts and bridges to permit traffic to cross shall be placed in advance of other grading operations; and if ordered by the Engineer roadway cuts shall be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction shall be conducted on but one-half the width of the traveled way at a time, and that portion of the traveled way being used by public traffic shall be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic.
- i. Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth, even condition free of humps and depressions, satisfactory for the use of public traffic.
- j. After the surface of the roadbed has been brought to a smooth and even condition for the passage of public traffic as above provided, any work ordered by the Engineer for the accommodation of public traffic prior to commencing subgrade operations will be paid for as extra work as provided in Section 3 of the General Provisions. After subgrade preparation for a specified layer of material has been completed, the Contractor shall, at the Contractor's expense, repair any damage to the roadbed or completed subgrade, including damage caused by the Contractor's operations or use by public traffic.

- k. While subgrade and paving operations are underway, public traffic shall be permitted to use the shoulders and, if half-width paving methods are used, shall also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least 2 lanes of traffic shall be kept open at locations where subgrade and paving operations are in active progress.
- l. When ordered by the Engineer, the Contractor shall furnish a pilot car and driver and flaggers for the purpose of expediting the 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 ordered by the Engineer, the movement of the Contractor's equipment from one portion of the Work to another shall be governed in accordance with the one-way controls.
- m. Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance.
- n. In order to expedite the passage of public traffic through or around the work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the Work. The cost of furnishing and installing the signs, lights, flares, temporary railing (Type K), barricades, and other facilities, not to be paid for as separate contract items, will be paid for as provided in Section 3 of the General Provisions.
- o. The Contractor will be required to pay the cost of replacing or repairing all facilities installed for the convenience or direction or warning of public traffic that are lost while in the Contractor's custody, or are damaged by reason of the Contractor's operations to such an extent as to require replacement or repair, and deductions from any moneys due or to become due the Contractor will be made to cover the cost thereof.
- p. Whenever a section of surfacing, pavement or the deck of a structure has been completed, the Contractor shall open it to use by public traffic if the Engineer so orders or may open it to use by public traffic if the Engineer so consents. In either case the Contractor will not be allowed any compensation due to any delay, hindrance or inconvenience to the Contractor's operations caused by public traffic, but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of that use. The Contractor will not be relieved of any other responsibility under the Contract nor will the Contractor be relieved of cleanup and finishing operations.
- q. Except as otherwise provided in this Section 6.1-16 or in the Special Provisions, full compensation for conforming to the provisions in this Section 6.1-16 shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefor.

6-1.16 Public Safety.

- a. It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.
- b. Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the City, furnish, erect and maintain those fences, temporary railing (Type K), barricades, lights, signs and other devices

and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.

- c. Fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the Agreement.
- d. The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered.
- e. Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in Chapter 6 of the MUTCD. Signs or other protective devices furnished and erected by the Contractor, at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the Agreement. Signs furnished and erected by the Contractor, at the Contractor's expense, shall be approved by the Engineer as to size, wording and location.
- f. The installation of general roadway illumination shall not relieve the Contractor of the responsibility for furnishing and maintaining any of the protective facilities herein before specified.
- g. Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workmen and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.
- h. The Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.
- i. 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.
- j. Lanes, ramps and shoulders shall be closed in accordance with the details shown on the plans, and as provided in the Special Provisions.
- k. The Contractor shall notify the Engineer not less than 18 days and not more than 90 days prior to the anticipated start of an operation that will change the vertical or horizontal clearance available to public traffic (including shoulders).
- l. Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than 4 feet beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated.
- m. When vertical clearance is temporarily reduced to 15 feet, or less, low clearance warning signs shall be placed in accordance with Chapter 2 of the MUTCD. Signs shall conform to the dimensions, color, and legend requirements of the MUTCD and these specifications except

that the signs shall have black letters and numbers on an orange retroreflective background. W12-2P signs shall be illuminated so that the signs are clearly visible.

- n. No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's Work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.
- o. Temporary facilities which the Contractor uses to perform the Work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.
- p. Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the Agreement for those facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved. Working drawings and design calculations for the temporary facilities shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California and shall be submitted to the Engineer for approval. The submittals shall designate thereon the standard design criteria or codes used. Installation of the temporary facilities shall not start until the Engineer has reviewed and approved the drawings.
- q. Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by the Contractor at the Contractor's expense. Should the Engineer point out the inadequacy of warning devices and protective measures, that action on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.
- r. Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities as provided in Section 6-1.16, "Public Convenience," or by contract item, shall in nowise relieve the Contractor from the responsibility as provided in this Section 6-1.17.
- s. Except as otherwise provided in this Section 6-1.17 or in the Special Provisions, full compensation for conforming to all of the provisions in this Section 6-1.17 shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefor.

6-1.17 Preservation of Property.

- a. Roadside trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities and any other improvements or facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect the objects from injury or damage. If the objects are injured or damaged by reason of the Contractor's operations, the objects shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the Work, or as good as required by the Agreement, if any of the objects are a part of the Work. The Engineer may make or cause to be made those temporary repairs that are necessary to restore to service any damaged highway facility. The cost of the repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the Contract.

- b. The fact that any underground facility is not shown upon the Project Plans shall not relieve the Contractor of the responsibility under Section 4-1.05, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of those underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.
- c. Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the Work involved in protecting or repairing property as specified in this Section 6-1.18, shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefor.

6-1.18 Sound Control Requirements. The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Agreement. Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without the muffler.

6-1.29 Disposal of Material Outside The Right Of Way.

- a. If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the City, or, if material is to be disposed of and the City has not made arrangements for disposal of the material, the Contractor shall make arrangements for disposing of the materials outside the highway right of way and shall pay all costs involved. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses and environmental clearances. Before disposing of any material outside the highway right of way, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site involved and has obtained the permits, licenses and clearances.
- b. When any material is to be disposed of outside the highway right of way, and the City has not made arrangements for disposal of the material, the Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and the Contractor shall file with the Engineer the authorization or a certified copy thereof together with a written release from the property owner absolving the City from any and all responsibility in connection with the disposal of material on the property. Before any material is disposed of on the property, the Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in the authorization. When material is disposed of as above provided and the disposal location is visible from a highway, the Contractor shall dispose of the material in a neat and uniform manner to the satisfaction of the Engineer.
- c. Where the City has made arrangements with owners of land in the vicinity of a project for the disposal of materials on an owner's property, the arrangements are made solely for the purpose of providing all bidders an equal opportunity to dispose of the materials on the property. Bidders or Contractors may, upon written request, inspect the documents evidencing the arrangements between property owners and the City. The Contractor may, if the Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under the arrangements, subject to and upon the conditions hereinafter set forth.
- d. Such arrangements are not a part of the Agreement and it is expressly understood and agreed that the City assumes no responsibility to the Contractor whatsoever in respect to the arrangements made with the property owner to dispose of materials thereon and that the Contractor shall assume all risks in connection with the use of the property, the terms upon which the use shall be made,

and there is no warranty or guaranty, either express or implied, as to the quantity or types of materials that can be disposed of on the property.

- e. In those instances in which the City has compiled "Materials Information" as referred to in Section 3, "Examination of Plans, Specifications, Contract, and Site of Work," of Instructions to Bidders, the compilation will include the documents setting forth the arrangement made with some of the property owners for the disposal of material on those owners' properties. The inclusion of the documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 6-1.20 concerning the documents.
- f. The Contractor is cautioned to make such independent investigation and examination as the Contractor deems necessary to be satisfied as to the quantity and types of materials which may be disposed of on the property and the rights, duties and obligations acquired or undertaken under the arrangement with the property owner.
- g. Notwithstanding that the Contractor may elect to dispose of materials on any such property owner's property, no material may be disposed of on that property unless the Contractor has first either:
 - 1. Executed a document that will guarantee to hold the owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agreed to conform to all other provisions set forth in the arrangement made between the City and the property owner. The document will be prepared by the Engineer for execution by the Contractor, or
 - 2. Entered into an agreement with the property owner of the disposal site on any terms mutually agreeable to the property owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the property owner, relieving the City of any and all obligations under the City's arrangement with the owner.
- h. If the Contractor elects to dispose of material under Section 6-1.20g.1, the use of the site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the City and the Contractor shall pay those charges that are provided for in the arrangement made by the City with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the contract sufficient to cover the charges for the material disposed of.
- i. If the Contractor elects to dispose of material under Section 6-1.20g.2, the Contractor shall pay those charges that are provided for in the agreement between the property owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the contract to cover the charges.
- j. The Engineer may require the Contractor to submit written evidence that the property owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of either: (1) the arrangement between the City and the property owner, or (2), the agreement between the property owner and the Contractor, as the case may be.
- k. Full compensation for all costs involved in disposing of materials as specified in this Section 6-1.20, including all costs of hauling, shall be considered as included in the price paid for the contract item of Work involving the materials and no additional compensation will be allowed therefor.

6.1-20 Assignment of Unfair Business Practice Claims. In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the City all right, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.

6-1.21 Notice of Potential Claim

- a. If for any reason the Contractor deems that additional compensation is due for Work or materials not clearly provided for in the Agreement, Project Plans or Technical Specifications or previously authorized extra work, a Notice of Potential Claim shall be made. The Contractor shall give the Engineer a written Notice of Potential Claim concerning such additional compensation before Work begins on the items on which the claim is based. The notice shall set forth the reasons for which the Contractor believes additional compensation will or may be due and the nature of the costs involved. Any Notice of Potential Claim submitted to the City by the Contractor shall have attached the following certification executed by an officer of the Contractor:

I, _____, being the _____ of _____ (Contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached claim and know its contents, and said claim is made in good faith; that it is supported by truthful and accurate data; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the City is liable; and further, that I am familiar with California Penal Code section 72 and California Government Code section 12650, et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment, or other severe legal consequences.

- b. The Contractor shall afford the Engineer every opportunity and facility for keeping records of actual cost of the work. The Contractor shall keep records of the disputed work in accordance with Section 3-1.17, Change Order Pricing.
- c. If such notification is not given or the Engineer is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the Engineer has kept account of the cost of the Work shall not in any way be construed as proving or substantiating the validity of the claim. When the Work on the which the claim for additional compensation is based has been completed, the Contractor shall within 10 calendar days of completion submit the Contractor's written claim to the Engineer, who will present it to the City for consideration in accordance with the Agreement, including, but not limited to Section 9-1.03 of the General Provisions and applicable law.
- d. Any claim for overhead type expense or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant. Any claim for overhead shall also be subject to audit by the City at its discretion.
- e. Any costs or expenses incurred by the City in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

SECTION 7 MEASUREMENT AND PAYMENT

7-1.01 F.O.B. All shipments must be F.O.B. destination to the Work site and/or other sites indicated in the Contract Documents. The Contract Price is all-inclusive (including sales tax). There shall be no additional compensation paid for containers, packing, unpacking, drayage or insurance. The Contract Price includes full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to this Agreement.

7-1.02 Payment.

- a. On or about the first day of each calendar month the Contractor will submit to the Engineer a verified application for payment and schedule of values supported by a statement showing all materials actually installed during the preceding month and the cost of labor actually expended in the performance of the Work. Unless otherwise provided in the Contract Documents, no allowances or payments will be made for material or equipment not placed at the Work site. Each invoice shall contain the following certification executed by a duly authorized officer of the Contractor:

I, _____, being the _____ of _____ (Contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached application for payment and know its contents, and said application is made in good faith; that it is supported by truthful and accurate data; that the amount requested accurately reflects the costs incurred during the period covered by this application; and further, that I am familiar with California Penal Code section 72 and California Government Code section 12650, et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment, or other severe legal consequences.

- b. To be eligible for payment, the Contractor's applications for payment must include certified payroll reports prepared in accordance with California Labor Code Section 1776 and the Agreement for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months. Applications for payment will not be processed without certified payroll reports.
- c. In accordance with California Public Contract Code Section 20104.50, the City will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven days after receipt by the City, along with a written description of the reasons why the application is improper. The Contractor's failure to submit a schedule in the time specified in Section 3-1.10 of the General Provisions or its submission of a schedule to which the City has taken any uncorrected exception, shall serve as a basis for returning an application for payment in its entirety.
- d. Unless the Contractor has elected to post securities in lieu of retention in accordance with California Public Contract Code Section 22300 and the Agreement, and the Contractor and the City have executed an escrow agreement in accordance with Public Contract Code Section 22300 and the Agreement, the City will make progress payments to the Contractor in accordance with applicable law in the amount of ninety-five (95) percent of the value of the labor actually performed and the material incorporated in the Work as specified in Contractor's verified application for payment upon approval by the City's authorized representative(s). Payment of progress payments will not be construed as acceptance of the Work performed. If the Contractor has elected to post securities

in lieu of retention in accordance with Public Contract Code Section 22300 and the Agreement and the Contractor and the City have executed an escrow agreement in accordance with Public Contract Code Section 22300 and the Agreement, the City will make payments to the Contractor or the Contractor's escrow agent in accordance with such escrow agreement.

- e. The City will pay the Contractor's final invoice in accordance with applicable law and this Section 7 of the General Provisions following acceptance of the Work provided that:
 - 1. The Contractor has furnished evidence satisfactory to the City that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have been released by valid release or release bond acceptable to the City.
 - 2. No claim has been presented to the City by any person based upon any acts or omissions of the Contractor or any subcontractor engaged in the performance of the Work.
 - 3. No other claim or dispute exists under the Agreement or applicable law concerning payment of the Contractor's final invoice and/or release of the Agreement retention.
 - 4. The Contractor has filed with the City the Maintenance Bond provided in the Contract Documents with duly notarized signatures of an authorized representative of the Contractor and an attorney-in-fact of an admitted surety insurer acceptable to the City and such Maintenance Bond binds the Contractor as Principal and the Surety in accordance with its terms in the amount of 10% of the final Contract Price.
- f. In accordance with California Public Contract Code Section 20104.50, if the City fails to make a progress payment within thirty (30) days of receipt of an undisputed, properly submitted application for payment, the City will pay the Contractor interest equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of days available to the City to make a payment without incurring an interest obligation pursuant to this provision and California Public Contract Code Section 20104.50 will be reduced by the number of days, if any, by which the City has delayed return of an application for payment beyond the seven day return requirement set forth in Section 7-1.02.

7-1.03 Non-Allowable Direct Charges. The following costs are not allowable direct charges under the Agreement. The following costs may only be paid under the Agreement, if at all, as part of any allowance for Contractor overhead and/or profit established under the Agreement.

- a. Labor costs in excess of applicable prevailing wages pursuant to the Agreement unless otherwise specified and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for Contractor and subcontractor employees engaged in the performance of the Work. However, in no event will allowable direct labor charges under the Agreement include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.
- b. Superintendent labor and clerical labor.
- c. Bond premiums.
- d. Insurance in excess of that required under Section 6-1.08 of the General Provisions.
- e. Utility costs.

- f. Work Site office expenses.
- g. Home office expenses.

7-1.04 Retention. The City or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:

- a. Defective work not remedied or uncompleted work.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure to properly pay subcontractors or to pay for material or labor.
- d. Reasonable doubt that the Work can be completed for the balance then unpaid.
- e. Damage to another contractor.
- f. Damage to the City.
- g. Damage to a third party.
- h. Delay in the progress of the Work, which, in the City's judgment, is due to the failure of the Contractor to properly expedite the Work.
- i. Liquidated damages or other charges that apply to the Contractor under the Agreement.
- j. Any other lawful basis for withholding payment under the Contract.

7-1.05 Not Used.

SECTION 8

PROJECT ACCEPTANCE AND CLOSEOUT

8-1.01 Occupancy. The City reserves the right to occupy or use any part or parts or the entirety of the Work before the Work is fully performed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the City's rights under the Agreement, any Agreement bonds, or at law or equity. Occupancy or use shall not waive the City's rights to assess liquidated damages in accordance with Section 5 after the date of such occupancy or use.

8-1.02 Work Completion and Final Inspection. When the Contractor considers the Work is completed, the Contractor will submit written certification to the Engineer specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the City's representative and are operational. The City and/or the City's authorized representatives will make an inspection to verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Engineer. Upon receiving a notice of correction, the City or the City's authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within 15 working days after the issuance of the punch list. Before acceptance of the Work the Contractor must submit: one set of the Project Record Drawings (As-Builts), and any equipment operating and maintenance instructions and data, warranties.

8-1.03 Work Acceptance.

- a. All finished Work will be subject to inspection and acceptance or rejection by the City, the Engineer, and the Designer or other government agencies having jurisdiction over the Work. Final acceptance of the Work will be at the discretion of the City.
- b. The City will accept the Work in writing only when the Work has been completed to the City's reasonable satisfaction. Progress payments will in no way be construed as acceptance of any part of the Work
- c. In evaluating the Work, no allowance will be made for deviations from the Technical Specifications, Project Plans or other Contract Documents unless already approved in writing in accordance with the requirements of Section 3, above.
- d. The fact that the Work and materials have been inspected from time to time and that progress payments have been made does not relieve the Contractor of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.

SECTION 9 REMEDIES AND DISPUTES

9-1.01 Failure to Correct Work. Within ten (10) working days of receiving written notice from the City describing Work that is defective or that is otherwise not in accordance with the requirements of the Agreement and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the City written notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the City's notice and the Agreement. If the Contractor and/or the Contractor's sureties do not give the City written notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the City's notice, then the City may correct such work and/or have such work corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other remedies that the City may have under the Agreement and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.

9-1.02 Termination.

a. In accordance with California Public Contract Code Section 7105, in addition to all other available remedies that the City may have under the Agreement, and at law or equity, the City may terminate the Agreement:

1. If the Contractor or any of its subcontractors engaged in the performance of the Work fails to timely perform the Work and/or any of the Contractor's material obligations under the Contract Documents, including but not limited to submission of an acceptable schedule, that have accrued except for those due to reasons beyond the control of the Contractor pursuant to the Contract Documents.
2. If the Contractor is adjudged bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its creditors.
3. If the Contractor or any of the subcontractors engaged in the performance of the Work persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials for the timely completion of the Work.
4. If the Contractor fails to make prompt payment to subcontractors engaged in the performance of the Work or for material or labor used in the performance of the Work in accordance with the Contract Documents and applicable law.
5. If the Contractor or any subcontractors engaged in the performance of the Work persistently disregards laws or ordinances applicable to the performance of the Work, or the instructions of the City, the Engineer, the Designer, or other authorized representatives of the City.
6. For any reason or for no reason, at the City's sole discretion.

b. If the City intends to terminate the Contractor's control of the Work for any of the reasons specified in Section 9-1.02(a) 1 through 5, above, the City will immediately serve written notice to the Contractor and its sureties in accordance with the Contract Documents. Notice of the City's intent to terminate the Agreement will be given by registered or certified mail and specify the grounds for termination, the required cure and the time by which the cure must be effected. Upon receipt of notice of the City's intent to terminate the Agreement for any of the reasons

specified in Section 9-1.02(a) 1 through 5, the Contractor will have ten (10) days from receipt of the notice or a longer time specified in the notice to cure its default. If the Contractor does not effect the required cure by the time specified in the notice, the City will issue a written notice of termination to the Contractor and its sureties by registered or certified mail. The notice of termination will specify: that upon receipt of the notice the Contractor's right to perform or complete the Work, including on behalf of the Contractor's sureties, is terminated; that the Contractor's sureties will have the right to take over and complete the Work and perform all of the Contractor's remaining obligations that have accrued under the Agreement; and that if the Contractor's sureties do not both give the City written notice of their intention to take over and perform the Agreement and commence completion of the Work and performance of all of the Contractor's remaining obligations that have accrued under the Agreement within ten (10) days after receipt of notice of termination that the City may declare the Contractor's sureties in default and take over the completion of the Work or have the Work completed for the account and at the expense of the Contractor and its sureties, and the Contractor and its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other available remedies that the City may have under the Contract Documents and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.

- c. Upon termination of the Contractor's control of the Work for any of the reasons specified in Section 9-1.02(a) 1 through 5, the Contractor will, if so directed by the City, immediately remove from the Work site any and all materials and personal property belonging to the Contractor which have not been incorporated in the Work and the Contractor and its sureties will be liable upon their bond for all damages caused the City by reason of the Contractor's failure to complete the Work.
- d. Upon termination of the Contractor's control of the Work for any of the reasons specified in Section 9-1.02(a) 1 through 5, above, the City reserves the right to refuse tender of the Contractor by any surety to complete the Work.
- e. If the City completes or has completed any portion of, or the whole of the Work, following termination of the Contractor's control of the Work for any of the reasons specified in Section 9-1.02(a) 1 through 5, above, the City will neither be liable for nor required to account to the Contractor or the Contractor's sureties in any way for the time within which, or the manner in which such Work is performed, or for any changes made in such Work or for the money expended in satisfying claims and/or suits and/or other obligations in connection with completing the Work. If, following termination of the Contractor's control of the Work for any of the reasons specified in Section 9-1.02(a) 1 through 5, above, the unpaid balance of the Contract Price exceeds the expense of completing the Work, including compensation for additional legal, managerial and administrative services and all other amounts due for the completion of the Work and/or satisfaction of claims of the City and/or others arising out of the Agreement and any other charges that apply to the Contractor under the Agreement, the difference will be paid to the Contractor. If such expenses of completing the Work exceed the unpaid balance of the Contract Price, the Contractor or its sureties will pay the difference to the City.
- f. If the Agreement or Contractor's control of the Work is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor.
- g. In accordance with California Government Code Section 4410, in the event a national emergency occurs, and public work being performed by contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work, then the City and the Contractor may, by written

agreement, terminate the Agreement. In accordance with California Government Code Section 4411, such an agreement will include the terms and conditions of the termination of the Contract and provision for the payment of compensation or money, if any, which either party will pay to the other or any other person, under the facts and circumstances in the case. Compensation to the Contractor will be determined on the basis of the reasonable value of the Work done, including preparatory Work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Work for which there is a separate contract price, the Contract Price shall control. The parties may in any other case adopt the Contract Price as the reasonable value of the Work or any portion of the Work done.

9-1.03 Disputes.

a. In accordance with California Public Contract Code Section 20104.2, the following procedures apply to claims of \$375,000 or less between the Contractor and the City:

1. Any claim submitted by Contractor to the City shall be in writing and include the documents necessary to substantiate the claim. All claims must be filed on or before the date of final payment. Any compromise, agreement, or understanding with respect to any claim submitted by Contractor shall have no effect unless and until said claim has been approved by the City Council of the City of St. Helena, or if the claim does not require City Council approval, said claim has been approved by the Public Works Director. Any claim submitted to the City by the Contractor shall have attached the following certification executed by an officer of the Contractor:

I, _____, being the _____ of _____ (Contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached claim and know its contents, and said claim is made in good faith; that it is supported by truthful and accurate data; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the City is liable; and further, that I am familiar with California Penal Code section 72 and California Government Code section 12650, et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment, or other severe legal consequences.

2. For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.

3. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.

4. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.

5. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.

6. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.
 7. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
 8. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.
 9. Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
 10. This Section 9-1.03 does not apply to tort claims and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- b. In accordance with California Public Contract Code Section 20104.4, the following procedures apply to civil actions to resolve claims of \$375,000 or less between the City and the Contractor:
1. Within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
 3. Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this section shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for

good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

4. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
 5. The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.
- c. In accordance with California Public Contract Code Section 20104.6:
1. The City shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Agreement.
 2. In any suit filed under Public Contract Code Section 20104.4 concerning this contract, the City shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.



Technical Specifications

For

**City of St. Helena
Waste Water Treatment Plant
Emergency Repair and Upgrade**

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SECTION 31

SCOPE OF WORK

31.1 General: The work generally consists of repairing a chlorine and irrigation line located within the City of St. Helena Waste Water Treatment Plant (WWTP) levee, fixing associated levee leaks and backfilling and compacting the levee as directed by the Engineer. All levee spoils shall be placed at a location at the WWTP as directed by the Engineer. Additional clay needed for levee repair shall be taken from existing clay borrow sites located at the WWTP. All work shall conform to the 2015 Standard Specifications.

Work shall be performed on a "Force Account Basis" as directed by the Engineer and will be paid for in accordance with section 9-1.04, "Force Account" of the 2015 Standard Specifications. Subsistence and Travel Allowances will not be paid.

All work done on a force account basis shall be recorded daily on report sheets prepared by Contractor and signed by both the Engineer and Contractor. Such reports shall thereafter be considered the true record of force account work performed during the project. Such reports shall be furnished to the Engineer and a copy retained by Contractor. All extensions of labor, equipment, and material costs shall be completed by Contractor and submitted to the Engineer as the basis of payment.

SECTION 32 NOTIFICATION

32-1.01: The Contractor shall notify the Engineer of any work to be performed on any given work day either on the afternoon of the prior working day or before 8:30 a.m. on the given working day. Any work completed for which the Project Engineer or Project Inspector has not received prior notification of its scheduling **MAY NOT BE ACCEPTED FOR PAYMENT.**

The Contractor shall maintain a Supervisor at the work site at all times and shall have the ability to communicate effectively with his crew, inspectors and City personnel, and who shall have the authority to sign change orders, coordinate work and make decisions pertaining to the fulfillment of the contract.

The Contractor shall provide a written notice of pending construction to all residents and businesses 7 calendar days prior to the start of work. A notice shall be placed at each front door and attempts made at personal contact. The Contractor shall inform each resident and business of the type of work, the scheduled date(s) and time of work, the potential impacts to the resident or business and request that cars be parked out of the roadway by 8:00 a.m. Services of notice shall not bar use of local cars within the block.

All written notices shall be submitted to the City for approval prior to distribution. The City may take up to 3 calendar days to review notices.

32-2.01 Payment: Full compensation for conforming to the provisions of this section shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed therefor.

SECTION 33 PAYMENT

Full compensation for repairing chlorine and irrigation lines at the WWTP as described in section 31, "Scope of Work" shall be paid on a Force Account basis, which price shall include full compensation for furnishing labor, material, tools and equipment and doing all work to repair the chlorine and irrigation lines, as specified herein and as required to complete the work and no additional compensation will be allowed therefore.

Full compensation for furnishing Construction Performance Bond and Construction Labor and Materials Payment Bond shall be paid for at the contract lump sum price. The amount paid for the above-mentioned bonds shall be the actual cost of the bonds without markup and based on payment receipts from the surety. Request for payment of bonding cost will be included in the first progress billing by the contractor.

Itemized costs associated with this contract are as follows:

	Quantity	Unit	Price	
GEI personnel including payroll (2 weeks x 3 personnel)	240	HR	100	\$24,000
10 days motels	10	DAY	250	\$2,500
Per Diem (3 personnel)	30	DAY	50	\$1,500
Trucking	1	LS	4,000	\$4,000
Excavator	1	LS	4,000	\$4,000
Pads foot compactor	1	LS	3,000	\$3,000
48" smooth drum roller	1	LS	1,500	\$1,500
Skid Steer loader	1	LS	4,000	\$4,000
Asphalt grinder attachment	1	LS	2,000	\$2,000
Dump truck	1	LS	3,500	\$3,500
Performance and payment bond	1	LS	2,200	\$2,200
Sanitary station	1	LS	350	\$350
Import materials at chlorine leak				-
AC 22 tons (taxed and delivery)	22	TON	100	\$2,200
AB 33 tons (taxed and delivery)	33	TON	60	\$1,980
Import materials at pump house fill				-
AB 11 tons	11	TON	60	\$660
Import materials at pump house ramp				-
AB 70 tons	70	TON	60	\$4,200
Subtotal				\$61,590
			GEI overhead cost (8%)	\$4,927
			GEI profit (15%)	\$9,238
			TOTAL BID	\$75,755

Appendix B to Construction Services Agreement

GENERAL CONDITIONS

ARTICLE 1 TERMS OF PERFORMANCE

- 1.01 Construction Services Agreement (Agreement) Force and Effect.** The provisions of the Agreement and other Contract Documents constitute the entire agreement between the Contractor and Owner regarding the Work described herein. No representation, term or covenant not expressly specified in the Contract Documents shall, whether oral or written, be a part of this agreement. The Agreement and other Contract Documents shall govern the Work described herein (whenever performed), and shall supersede all other purchase orders and agreements between Contractor and Owner, and any proposal, with respect to the Work described herein.
- 1.02 No Modification or Waiver.** The Contract Documents may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Owner and Contractor. Contract Documents headings are for convenience only and do not affect the construction of the Contract Documents.
- 1.03 Performance of Work/No Assignment.** Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by Owner, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day, and shall not damage or disrupt any property unless specifically part of the scope of the Agreement. Contractor shall not contract any portion of the Work or otherwise assign the Agreement without prior written approval of Owner. (Contractor shall remain responsible for compliance with all terms of the Contract Documents, regardless of the terms of any such assignment.) The Contractor shall permit Owner (or its designees) access to the work area, Contractor's shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Owner representative, or certification by any governmental entity, shall in no way limit Contractor's obligations under the Contract Documents. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of the Contract Documents, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. Owner shall have, at all times, set-off rights with respect to any payment and Contractor's failure to perform the terms of the Contract Documents.

ARTICLE 2 LEGAL AND MISCELLANEOUS

- 2.01 Records and Payment Requests.** Contractor shall submit all billings with all necessary invoices or other appropriate evidence of proper performance, after which Owner shall make payment within thirty (30) days. Upon Owner's written request, Contractor shall make available to Owner, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the Work or the expenditures and disbursement charged to Owner, and all correspondence, internal memoranda, calculations, books and accounts, records documenting its Work under the Agreement, and invoices, payrolls, timecards, records and all other data related to matters covered by the Agreement. Contractor shall furnish to Owner, its authorized agents, officers, or employees, such other evidence or information as Owner may require with regard to the Work or any such expenditure or disbursement charged by Contractor. Contractor shall maintain all such documents and records prepared by or furnished to Contractor during the course of performing the Work for at least five years following completion of the Work, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Contractor shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of the Agreement shall have the same rights conferred to Owner by this section. Such rights shall be specifically enforceable.
- 2.02 Independent Contractor.** Contractor is an independent Contractor and does not act as Owner's agent in any capacity, whatsoever. Contractor is not entitled to any benefits that Owner provides to Owner employees including, without limitation, insurance, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within the Contract Documents regarding directives apply to and concern the result of the Contractor's provision of Work not the means, methods, or scheduling of the Contractor's Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under the Contract Documents. Contractor shall pay all payroll taxes imposed by

any governmental entity and will pay all other taxes not specifically identified in the Contract Documents as Owner's responsibility.

- 2.03 Indemnity/Liability.** Contractor shall defend, indemnify, and save harmless, to the fullest extent permitted by law, the Owner and each of its officers, directors, representatives, agents and employees, against all claims, suits, actions, loss, cost, damage, expense, and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor's negligence in performing the Work pursuant to the Contract Documents. Notwithstanding any provision of the Contract Documents, Owner shall not be liable to Contractor or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with the Contract Documents or the Work. Owner's rights and remedies, whether under the Agreement or other applicable law, shall be cumulative and not subject to limitation.
- 2.04 Defective Work; Warranties.** Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices, all Contract Documents requirements, and all laws, codes, standards, licenses, and permits. Contractor warrants that all materials and equipment shall be new, of suitable grade of their respective kinds for their intended uses, and free from defects. Contractor hereby grants to Owner for a period of one year following the date of completion its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers. If either prior to completion of the Work, or within one year after completion, any Work (completed or incomplete) is found to violate any of the foregoing warranties (**Defective Work**), Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct, remove and replace the Defective Work with conforming Work, and correct, remove and replace any damage to other Work or other property resulting therefrom. If Contractor fails to do so, Contractor shall pay all of the Owner's resulting claims, costs, losses and damages. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- 2.05 Compliance with Laws; Conflict of Interests.** Contractor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in anyway attempt to use the position afforded them by the Contract Documents to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency.
- 2.06 Termination; Suspension; Disputes.** Owner may direct Contractor to terminate, suspend, delay, interrupt or accelerate Work, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner will issue such directives in writing, and may do so, in whole or in part, for its convenience or due to Contractor's fault. Owner will compensate Contractor for extra costs resulting from such directives only to the extent that Owner issues such directives for its convenience and not due to Contractor's fault (but Owner shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for Owner's convenience.) Contractor shall continue its Work throughout the course of any dispute, and Contractor's failure to continue Work during a dispute shall be a material breach of the Contract Documents. All claims by Contractor against Owner shall be submitted in writing to Owner, and shall be governed by Public Contract Code Sections 9204 and 20104 – 20104.6, as applicable, after which time the one year time period in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days. Should Contractor be terminated for default, and such termination is subsequently determined to be wrongful, such termination will be converted to a termination for convenience as provided herein.
- 2.07 Execution; Venue; Limitations.** The Agreement shall be deemed to have been executed in Napa County, California. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in the Contract Documents, nothing in the Contract Documents shall operate to confer rights or benefits on persons or entities not party to the Agreement. As between the parties to the Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of the Contract Documents, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.
- 2.08 Employee Wages; Records; Apprentices.** Contractor shall pay prevailing wages to its employees on any contract in excess of \$1,000.00 (one thousand dollars). Copies of the prevailing rate of per diem wages are on

file at Owner's principal office. Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subcontractors shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Section 1771.4 (if applicable) and 1776, including (if the Agreement is awarded on or after April 1, 2015 or continues on or after January 1, 2016) to the Labor Commissioner no less frequently than monthly. Contractor shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If the Agreement exceeds \$2,000 and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements.

- 2.09 Mandatory Contractor and Subcontractor Registration.** [Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.
- 2.10 Worker's Compensation.** Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that 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 Contractor shall comply with such provisions before commencing the performance of the Work.
- 2.11 Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.**
- A. If Contract Sum under the Agreement exceeds (or is expected to exceed) \$25,000, Contractor shall provide a construction performance bond in form attached hereto as Appendix D – Construction Performance Bond, and a construction labor and material payment bond, in accordance with Civil Code Section 9550 and in form attached hereto Appendix E – Construction Labor and Materials Payment Bond. Contractor may not substitute cash in lieu of the required bond(s).
- B. If the Agreement specifies performance retention, Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).
- 2.12 Earthwork and Underground Facilities.** If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall notify Owner in writing of any material that Contractor believes may be hazardous waste that is required to be removed in accordance law, subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, pursuant to Section 7104 of the Public Contract Code. For any Work involving trench shoring that costs in excess of \$25,000, Contractor shall submit and Owner (or a registered civil or structural engineer employed by Owner) must accept, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, pursuant to Labor Code Section 6705. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding.

Appendix C to Construction Services Agreement

INSURANCE

1. Commercial General Liability Insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than **\$2,000,000** general aggregate and **\$2,000,000** each occurrence, subject to a deductible of not more than **\$1,000** payable by Contractor.
2. Business Automobile Liability Insurance with limits not less than **\$2,000,000** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than **\$1,000** payable by Contractor.
3. Workers' Compensation Employers' Liability limits not less than **\$2,000,000** each accident, [**\$2,000,000**] per disease and **\$2,000,000** aggregate. Contractor's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation in favor of the City of St. Helena, its officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
4. Builder's Risk Insurance including, without limitation, coverage against loss or damage to the Work by fire, lightening, wind, hail, aircraft, riot, vehicle damage, explosion, smoke, falling objects, vandalism, malicious mischief, collapse, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of all construction constituting any part of the Work, excluding the cost of excavations, of grading and filling of the land, and except that such insurance may be subject to deductible clauses not to exceed **\$10,000** for any one loss. Such insurance will not cover loss or damage to Contractor's equipment, scaffolding or other materials not to be consumed in the construction of the Work. The insurer shall waive all rights of subrogation against Owner.
5. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Owner as an additional insured. The requirements for coverage and limits shall be the greater of either the minimum coverage and limits specified in this Agreement or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.
6. In addition to any provisions required in clauses 1-5 above, Insurance policies in Appendix C shall contain an endorsement containing the following terms (excluding Workers Compensation insurance with respect to paragraph 6.01 below):
 - 6.01 City of St. Helena, its officers, directors, officials, agents, employees, and volunteers, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.
 - 6.02 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
 - 6.03 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to Owner thirty (30) days in advance of the effective date thereof.
 - 6.04 Insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.
7. Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 6.03 above.
8. All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of [**A-,VII**] or better. Required minimum amounts of insurance may be increased should conditions of Work, in the opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.
9. The insurance coverage limits may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Owner, to the extent required by this Agreement, before the Owner's insurance or self-insurance may be called upon to protect Owner as a named insured.

10. All self-insured retentions (SIR) must be disclosed to Owner for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Contractor/named insured or Owner.
11. Contractor agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this Agreement that is required of Contractor including, without limitation, the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor shall agree to be bound to Contractor and Owner in the same manner and to the same extent as Contractor is bound to Owner under this Contract and its accompanying documents. Subcontractors shall further agree to include these same provisions with any lower tier subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. Contractor shall require all subcontractors to provide a valid Certificate of Insurance and the required endorsements included in the subcontract agreement, and will provide proof of compliance to the Owner prior to commencement of any work by the subcontractor.
12. Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, Owner at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, **City of St. Helena**, a General Law City and municipal corporation of the State of California (**Owner**) has awarded to **Gregory Equipment Inc.**, as Principal a Construction Services Agreement dated the 1ST day of AUGUST, 2017 (**Agreement**), titled **THE CITY OF ST HELENA WASTE WATER TREATMENT PLANT EMERGENCY LEVEE REPAIR AND UPGRADE PROJECT** in the amount of \$75,755.00, which Agreement is by this reference made a part hereof, for the work described as follows:

The work generally consists of repairing Levees, irrigations systems and chorine lines at the City of St. Helena Waste Water Treatment Plant.

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

IN WITNESS WHEREOF, we have hereunto set our hands this 25th day of JULY, 2017.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

GREGORY EQUIPMENT, INC.

Signature

Jo Gregory

Name

Title

13279 FIVE GS LANE

Street Address

REDDING, CA 96003

City, State, Zip Code

SURETY

Company: _____ (Corp. Seal)
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

Signature

Colleen Mchugh

COLLEEN MCHUGH

Name

ATTORNEY-IN-FACT

Title

850 REMOR STREET

Street Address

REDDING, CA 96002

City, State, Zip Code



ACKNOWLEDGMENT

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

State of California
County of Shasta

On JULY 25, 2017 before me, Tina Coulter, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.
Type of document: BOND

Signature  (Seal)





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 225534

Certificate No. 007191336

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Colleen McHugh, and Bobette Winton

of the City of Redding, State of California, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 17th day of April, 2017.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: Robert L. Raney, Senior Vice President

On this the 17th day of April, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2021.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 25TH day of JULY, 2017

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

Kevin E. Hughes
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, the City of St. Helena, a General Lay and municipal corporation of the State of California has awarded to Gregory Equipment, Inc. as Principal a Construction Services Agreement, dated the 30th day of August, 2017 (Agreement), titled THE CITY OF ST HELENA WASTE WATER TREATMENT PLANT EMERGENCY LEVEE REPAIR AND UPGRADE PROJECT located at 1 Chaix Lane St. Helena, CA 94574 in the amount of \$75,755.00, which Agreement is by this reference made a part hereof, for the work described as follows:

The work generally consists of repairing Levees, irrigations systems and chorine lines at the City of St. Helena Waste Water Treatment Plant.

- 2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
3. NOW, THEREFORE, we, the undersigned Principal and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM (\$75,755.00) for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
5. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.
8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this 25TH day of JULY, 2017.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal) GREGORY EQUIPMENT, INC.

Company: (Corp. Seal) TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

Signature

Signature

[Handwritten signature of Jo Gregory]

[Handwritten signature of Colleen Mchugh]

Name

Name COLLEEN MCHUGH ATTORNEY-IN-FACT

ACKNOWLEDGMENT

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

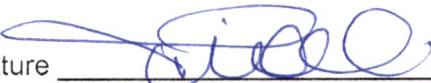
State of California
County of Shasta)

On JULY 25, 2017 before me, Tina Coulter, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.
Type of document: BOND

Signature 

(Seal)





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 225534

Certificate No. 007191337

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Colleen McHugh, and Bobette Winton

of the City of Redding, State of California, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 17th day of April, 2017.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 17th day of April, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2021.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 25TH day of JULY, 20 17


Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/25/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Nor Cal Pacific Insurance Services LIC #0D08482 P.O. Box 494249 Redding CA 96049-4249		CONTACT NAME: Megan Gannon PHONE (A/C No, Ext): (530) 221-2300 FAX (A/C, No): (530) 221-2030 E-MAIL ADDRESS: megan-gannon@norcalpacific.com															
INSURED Gregory Equipment, Inc. 13279 Five GS Lane Redding CA 96003		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Colony Insurance Company</td> <td>39993</td> </tr> <tr> <td>INSURER B: Golden Eagle Insurance Co</td> <td>10375</td> </tr> <tr> <td>INSURER C: Topa Insurance Co</td> <td>18031</td> </tr> <tr> <td>INSURER D: Westchester Surplus Lines Ins</td> <td>10172</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A: Colony Insurance Company	39993	INSURER B: Golden Eagle Insurance Co	10375	INSURER C: Topa Insurance Co	18031	INSURER D: Westchester Surplus Lines Ins	10172	INSURER E:		INSURER F:	
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INSURER D: Westchester Surplus Lines Ins	10172																
INSURER E:																	
INSURER F:																	

COVERAGES CERTIFICATE NUMBER: 16-17GL, BA, UM 17-18 POL REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	Y	103GL0011421-01	10/6/2016	10/6/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	X	Y	BAW(17)56937229	10/6/2016	10/6/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist combined \$ 1,000,000
C	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			Umbrella goes over General Liability & Auto XL6607569-01	10/6/2016	10/6/2017	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				PER STATUTE OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
D	Pollution Liability			G27977728 002	4/21/2017	4/21/2018	Amount -\$1,000,000 per Occ \$2,000,000 Agg Deductible - 2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re Project: City of St. Helena Waste Water Treatment Plant Emergency Levee Repair and Upgrade, Agreement No. PW 2017
 City of St. Helena, its officers, directors, officials, agents, employees, and volunteers, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured as per attached endorsements.

CERTIFICATE HOLDER City of St. Helena 1480 Main St. Helena, CA 94574	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Bobette Winton/JA [Signature]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED –
OWNERS, LESSEES OR CONTRACTORS –
SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Additional Insured Person(s) or Organization(s) (Additional Insured):	Location(s) of Covered Operations:
All persons or organizations as required by written contract with the Named Insured	As designated in written contract with the Named Insured

A. **SECTION II – WHO IS AN INSURED** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

Additional Insured Contractual Liability

"Bodily injury" or "property damage" for which the additional insured(s) are obligated to pay damages by reason of the assumption of liability in a contract or agreement.

Finished Operations at Work

"Bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization.

Negligence of Additional Insured

"Bodily injury" or "property damage" arising directly or indirectly out of the negligence of the additional insured(s).

- C. SECTION IV -- COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance is amended and the following added:

The insurance afforded by this Coverage Part for the additional insured shown in the Schedule is primary insurance and we will not seek contribution from any other insurance available to that additional insured.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION – COMPLETED OPERATIONS & ONGOING
OPERATIONS AS SCHEDULED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Operations
All persons or organizations as required by written contract with the Named Insured	As designated in a written contract for the Named Insured for commercial projects only.

A. Section II – Who Is An Insured is amended to include the person(s) or organization(s) shown in the Schedule (called additional insured), but only with respect to:

(1) Liability for "bodily injury" or "property damage" caused, in whole or in part, resulting from "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard" when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be named as an additional insured on your policy.

(2) Liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by resulting from:

(a) Your acts or omissions; or

(b) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. Section IV – Commercial General Liability Conditions, 4. Other Insurance is amended and the following added:

If you are required by written contract to provide primary insurance, the insurance afforded by this Coverage Part for the additional insured shown in the Schedule is primary insurance and we will not seek contribution from any other insurance available to that additional insured.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to Paragraph 8, Transfer Of Rights Of Recovery Against Others To Us of Section IV - Conditions:

We waive any rights of recovery we may have against any person or organization because of payments we make for injury or damage resulting from your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" if:

- a. you agreed to such waiver;
- b. the waiver is included as part of a written contract or lease; and
- c. such written contract or lease was executed prior to any loss to which this insurance applies.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

COVERAGE INDEX

<u>SUBJECT</u>	<u>PROVISION NUMBER</u>
ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT	3
ACCIDENTAL AIRBAG DEPLOYMENT	12
AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS	19
AMENDED FELLOW EMPLOYEE EXCLUSION	5
AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE	13
BROAD FORM INSURED	1
BODILY INJURY REDEFINED	22
EMPLOYEES AS INSURED (including employee hired auto)	2
EXTENDED CANCELLATION CONDITION	23
EXTRA EXPENSE - BROADENED COVERAGE	10
GLASS REPAIR - WAIVER OF DEDUCTIBLE	16
HIRE AUTO PHYSICAL DAMAGE (including employee hired auto and loss of use)	6
HIRE AUTO COVERAGE TERRITORY	20
LOAN / LEASE GAP	14
PARKED AUTO COLLISION COVERAGE (WAIVER OF DEDUCTIBLE)	10
PERSONAL EFFECTS COVERAGE	11
PHYSICAL DAMAGE - ADDITIONAL TRANSPORTATION EXPENSE COVERAGE	8
RENTAL REIMBURSEMENT	9
SUPPLEMENTARY PAYMENTS	4
TOWING AND LABOR	7
TWO OR MORE DEDUCTIBLES	17
UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS	18
WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US	20

SECTION II - LIABILITY COVERAGE is amended as follows:

1. BROAD FORM INSURED

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

d. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period. However, "insured" does not include any organization that:

- (1) is a partnership or joint venture; or
- (2) is an insured under any other automobile policy; or
- (3) has exhausted its limit of insurance under any other automobile policy.

Paragraph d. (2) of this provision does not apply to a policy written to apply specifically in excess of this policy.

e. Any organization you newly acquire or form, other than a partnership or joint venture, of which you own more than 50 percent of the voting stock. This automatic coverage is afforded only for 180 days from the date of acquisition or formation. However, coverage under this provision does not apply:

- (1) if there is similar insurance or a self-insured retention plan available to that organization;

- (2) If the Limits of Insurance of any other Insurance policy have been exhausted; or
- (3) To "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

2. EMPLOYEES AS INSURED

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

- f. Any "employee" of yours while using a covered "auto" you do not own, hire or borrow, but only for acts within the scope of their employment by you. Insurance provided by this endorsement is excess over any other insurance available to any "employee".
- g. An "employee" of yours while operating an "auto" hired or borrowed under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business and within the scope of their employment insurance provided by this endorsement is excess over any other insurance available to the "employee".

3. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

- h. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed in a written contract, agreement, or permit issued to you by governmental or public authority, to add such person, or organization, or governmental or public authority to this policy as an "insured".

However, such person or organization is an "insured":

- (1) Only with respect to the operation, maintenance or use of a covered "auto";
- (2) Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or agreement, or the permit has been issued to you; and
- (3) Only for the duration of that contract, agreement or permit

4. SUPPLEMENTARY PAYMENTS

SECTION II - LIABILITY COVERAGE, Coverage Extensions, 2.a. Supplementary Payments, paragraphs (2) and (4) are replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for repeated traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request, including actual loss of earnings up to \$500 a day because of time off from work.

5. AMENDED FELLOW EMPLOYEE EXCLUSION

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by the workers compensation exclusivity rule, or similar protection, the following provision is added:

SECTION II - LIABILITY, exclusion B.5. FELLOW EMPLOYEE does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

SECTION III - PHYSICAL DAMAGE COVERAGE is amended as follows:

6. HIRED AUTO PHYSICAL DAMAGE

Paragraph A.4. Coverage Extensions of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos":

- a. You hire, rent or borrow; or

b. Your "employee" hires or rents under a written contract or agreement in that "employee's" name, but only if the damage occurs while the vehicle is being used in the conduct of your business,

subject to the following limit and deductible:

- A. The most we will pay for "loss" in any one "accident" or "loss" is the smallest of:
 - (1) \$50,000; or
 - (2) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - (3) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality, minus a deductible.
- B. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.
- C. Subject to the limit, deductible and excess provisions described in this provision, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.
- D. Subject to a maximum of \$1,000 per "accident", we will also cover the actual loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss.
- E. This coverage extension does not apply to:
 - (1) Any "auto" that is hired, rented or borrowed with a driver; or
 - (2) Any "auto" that is hired, rented or borrowed from your "employee".

For the purposes of this provision, SECTION V - DEFINITIONS is amended by adding the following: "Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

7. TOWING AND LABOR

SECTION III - PHYSICAL DAMAGE COVERAGE, paragraph A.2. Towing, is amended by the addition of the following:

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

- a. For private passenger type vehicles, we will pay up to \$50 per disablement.
- b. For "light trucks", we will pay up to \$50 per disablement. "Light trucks" are trucks that have a gross vehicle weight (GVW) of 10,000 pounds or less.
- c. For "medium trucks", we will pay up to \$150 per disablement. "Medium trucks" are trucks that have a gross vehicle weight (GVW) of 10,001 - 20,000 pounds.

However, the labor must be performed at the place of disablement.

8. PHYSICAL DAMAGE - ADDITIONAL TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a., Coverage Extension of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended to provide a limit of \$50 per day and a maximum limit of \$1,500

9. RENTAL REIMBURSEMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

- a. We will pay up to \$75 per day for rental reimbursement expenses incurred by you for the rental of an "auto" because of "accident" or "loss", to an "auto" for which we also pay a "loss" under Comprehensive, Specified Causes of Loss or Collision Coverages. We will pay only for those expenses incurred after the first 24 hours following the "accident" or "loss" to the covered "auto."
- b. Rental Reimbursement will be based on the rental of a comparable vehicle, which in many cases may be substantially less than \$75 per day, and will only be allowed for the period of time it should take to repair or replace the vehicle with reasonable speed and similar quality, up to a maximum of 30 days.
- c. We will also pay up to \$500 for reasonable and necessary expenses incurred by you to remove and replace your tools and equipment from the covered "auto".
- d. This coverage does not apply unless you have a business necessity that other "autos" available for your use and operation cannot fill.
- e. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided under Paragraph 4. Coverage Extension.
- f. No deductible applies to this coverage.

For the purposes of this endorsement provision, materials and equipment do not include "personal effects" as defined in provision 11.

10. EXTRA EXPENSE - BROADENED COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you. The maximum amount we will pay is \$1,000.

11. PERSONAL EFFECTS COVERAGE

A. SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$600 for "personal effects" stolen with the "auto."

The insurance provided under this provision is excess over any other collectible insurance.

B. SECTION V - DEFINITIONS is amended by adding the following:

For the purposes of this provision, "personal effects" mean tangible property that is worn or carried by an Insured." "Personal effects" does not include tools, equipment, jewelry, money or securities.

12. ACCIDENTAL AIRBAG DEPLOYMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion for "loss" relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

Any insurance we provide shall be excess over any other collectible insurance or reimbursement by manufacturer's warranty. However, we agree to pay any deductible applicable to the other coverage or warranty.

13. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS, exception paragraph a. to exclusions 4.c. and 4.d. is deleted and replaced with the following:

Exclusion 4.a. and 4.d. do not apply to:

- a. Electronic equipment that receives or transmits audio, visual or data signals, whether or not designed solely for the reproduction of sound, if the equipment is permanently installed in the covered "auto" at the time of the "loss" and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto" and physical damage coverages are provided for the covered "auto"; or

If the "loss" occurs solely to audio, visual or data electronic equipment or accessories used with this equipment, then our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a \$100 deductible.

14. LOAN / LEASE GAP COVERAGE

- A. Paragraph C., LIMIT OF INSURANCE of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by adding the following:

The most we will pay for a "total loss" to a covered "auto" owned by or leased to you in any one "accident" is the greater of the:

1. Balance due under the terms of the loan or lease to which the damaged covered "auto" is subject at the time of the "loss" less the amount of:
 - a. Overdue payments and financial penalties associated with those payments as of the date of the "loss",
 - b. Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear,
 - c. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease,
 - d. Transfer or rollover balances from previous loans or leases,
 - e. Final payment due under a "Balloon Loan",
 - f. The dollar amount of any unrepaired damage which occurred prior to the "total loss" of a covered "auto",
 - g. Security deposits not refunded by a lessor,
 - h. All refunds payable or paid to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered "auto",
 - i. Any amount representing taxes,
 - j. Loan or lease termination fees; or

2. The actual cash value of the damage or stolen property as of the time of the "loss".

An adjustment for depreciation and physical condition will be made in determining the actual cash value at the time of the "loss". This adjustment is not applicable in Texas.

B. ADDITIONAL CONDITIONS

This coverage applies only to the original loan for which the covered "auto" that incurred the loss serves as collateral, or lease written on the covered "auto" that incurred the loss.

C. SECTION V - DEFINITIONS is changed by adding the following:

As used in this endorsement provision, the following definitions apply:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

A "balloon loan" is one with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.

15. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Paragraph D. Deductible of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

No deductible applies to glass damage if the glass is repaired rather than replaced.

16. PARKED AUTO COLLISION COVERAGE (WAIVER OF DEDUCTIBLE)

Paragraph D. Deductible of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

The deductible does not apply to "loss" caused by collision to such covered "auto" of the private passenger type or light weight truck with a gross vehicle weight of 10,000 lbs. or less as defined by the manufacturer as maximum loaded weight the "auto" is designed to carry while it is:

- a. In the charge of an "insured";
- b. Legally parked; and
- c. Unoccupied.

The "loss" must be reported to the police authorities within 24 hours of known damage.

The total amount of the damage to the covered "auto" must exceed the deductible shown in the Declarations.

This provision does not apply to any "loss" if the covered "auto" is in the charge of any person or organization engaged in the automobile business.

17. TWO OR MORE DEDUCTIBLES

Under SECTION III PHYSICAL DAMAGE COVERAGE, if two or more company policies or coverage forms apply to the same accident, the following applies to paragraph D. Deductible:

- a. If the applicable Business Auto deductible is the smaller (or smallest) deductible it will be waived; or
- b. If the applicable Business Auto deductible is not the smaller (or smallest) deductible it will be reduced by the amount of the smaller (or smallest) deductible; or
- c. If the loss involves two or more Business Auto coverage forms or policies the smaller (or smallest) deductible will be waived.

For the purpose of this endorsement company means any company that is part of the Liberty Mutual Group.

SECTION IV - BUSINESS AUTO CONDITIONS is amended as follows:

18. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph B.2. is amended by adding the following:

If you unintentionally fail to disclose any hazards, exposures or material facts existing as of the inception date or renewal date of the Business Auto Coverage Form, the coverage afforded by this policy will not be prejudiced.

However, you must report the undisclosed hazard or exposure as soon as practicable after its discovery, and we have the right to collect additional premium for any such hazard or exposure.

19. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph A.2.a. is replaced in its entirety by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when it is known to:
 1. You, if you are an individual;
 2. A partner, if you are a partnership;
 3. Member, if you are a limited liability company;
 4. An executive officer or the "employee" designated by the Named Insured to give such notice, if you are a corporation.

To the extent possible, notice to us should include:

(1) How, when and where the "accident" or "loss" took place;

(2) The "insured's" name and address; and

(3) The names and addresses of any injured persons and witnesses.

20. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph A.5., Transfer of Rights of Recovery Against Others to Us, is amended by the addition of the following:

If the person or organization has waived those rights before an "accident" or "loss", our rights are waived also.

21. HIRED AUTO COVERAGE TERRITORY

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph B.7., Policy Period, Coverage Territory, is amended by the addition of the following:

f. For "autos" hired 30 days or less, the coverage territory is anywhere in the world, provided that the insured's responsibility to pay for damages is determined in a "suit", on the merits, in the United States, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

This extension of coverage does not apply to an "auto" hired, leased, rented or borrowed with a driver.

SECTION V - DEFINITIONS is amended as follows:

22. BODILY INJURY REDEFINED

Under SECTION V - DEFINITIONS, definition C. is replaced by the following:

"Bodily Injury" means physical injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

COMMON POLICY CONDITIONS

23. EXTENDED CANCELLATION CONDITION

COMMON POLICY CONDITIONS, paragraph A. - CANCELLATION condition applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. This provision does not apply in those states which require more than 60 days prior notice of cancellation.

CITY OF ST. HELENA

RESOLUTION NO. 2017-107

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA APPROVING AN AGREEMENT FOR CONSTRUCTION SERVICES WITH GREGORY EQUIPMENT INC., FOR AN EMERGENCY REPAIR AND UPGRADE TO THE LEVEE AT THE WASTE WATER TREATMENT PLANT IN AN AMOUNT NOT TO EXCEED \$75,755

RECITALS

- A. The City requires emergency construction services for its Waste Water Treatment Plant at 1 Chaix Lane; and
- B. The City Engineer requested and Gregory Equipment Inc. responded with a proposal for construction services; and
- C. The City Engineer has reviewed and evaluated the proposal received and otherwise confirmed Gregory Equipment Inc. has the skills, experience and qualifications to provide the desired services; and
- D. The attached agreement establishes the terms and conditions under which Gregory Equipment Inc. will provide the necessary services; and
- E. The emergency repair of the existing pipeline, serving an existing publicly owned service facility, is conducted under a Statutory Exemption identified under Section(s) 15269, 15282, and 15284 of the California Environmental Quality Act; and
- F. The City Attorney has reviewed and approved the agreement; and
- G. The project will be funded by the wastewater fund, Fund 571, from the Wastewater net position, in an amount not to exceed \$75,755.

RESOLUTION

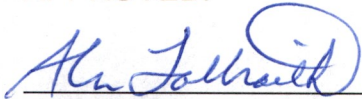
The City Council of the City of St. Helena hereby resolves as follows:

1. The City Council retroactively approves the agreement for construction services with Gregory Equipment Inc.
2. The City Council authorizes the City Manager to retroactively execute the Construction Services Agreement.

Approved at a Regular Meeting of the St. Helena City Council on August 8, 2017 by the following vote:

Mayor Galbraith: Yes
Vice Mayor White: Yes
Councilmember Dohring: Yes
Councilmember Koberstein: Yes
Councilmember Ellsworth: Yes

APPROVED:



Alan Galbraith, Mayor

ATTEST:



Cindy Black, City Clerk

