

TOWN OF ROSS

MORRISON RD PAVING REHABILITATION PROJECT

TOWN PROJECT NO. 9040-45-MOR

CONTRACT DOCUMENTS

NOTICE TO CONTRACTORS AND SPECIAL PROVISIONS

BID OPENING: WEDNESDAY, AUGUST 6, 2025, 2 pm

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**SECTION I - PROJECT SUMMARY
& ENGINEER'S ESTIMATE**

PROJECT SUMMARY & ENGINEER'S ESTIMATE:

The work to be performed under this contract for the MORRISON RD PAVEMENT REHABILITATION, in the Town of Ross, consists of, but is not limited to: roadway grinding and overlay; roadway signage and striping; traffic control, water pollution control, and ancillary work as shown on the project plans.

The Town Engineer has estimated the total cost of this project to be \$216,880.

**TIME FOR COMPLETION:
30 WORKING DAYS**

Paperless Plans, Special Provisions and Bid Forms may be obtained from the Town of Ross website at <https://www.townofrossca.gov/publicworks/page/accepting-bids-MORRISON> Standard Specifications for the Cities and County of Marin are available for reference at the County of Marin Public Works Department website.

SUBMIT PROPOSALS TO:

Office of the Town Clerk
31 Sir Francis Drake Blvd. P.O. Box 320
Ross, CA 94957

By 2 p.m. WEDNESDAY, AUGUST 6, 2025

**BIDS WILL BE OPENED AND READ PUBLICLY
at Ross Town Hall 2 p.m.
31 Sir Francis Drake Blvd.**

On WEDNESDAY, AUGUST 6, 2025

Prepared by:

**Richard Simonitch
Director of Public Works/Town Engineer**

SECTION II - NOTICE INVITING BIDS

NOTICE INVITING BIDS

**TOWN OF ROSS
STATE OF CALIFORNIA**

**MORRISON RD PAVEMENT REHABILITATION
TOWN PROJECT NO. 9040-45-MOR**

SEALED BIDS will be received at the office of the Town Clerk, located in the Town Hall at 31 Sir Francis Drake Blvd., Ross, California, 94957, until the hour of 2:00 p.m. on Wednesday August 6th, 2025, at which time they will be publicly opened and read, for performing the following work:

The work to be performed under this contract for the MORRISON RD PAVEMENT REHABILITATION, in the Town of Ross, consists of, but is not limited to: roadway grinding and overlay; roadway signage and striping; traffic control, water pollution control, and ancillary work as shown on the project plans.

Paperless Plans and specifications can be obtained from the Town of Ross website at <https://www.townofrossca.gov/publicworks/page/accepting-bids-MORRISON>

In accordance with California Public Contract Code Section 20170, all bids must be presented under sealed cover and include one of the following forms of bidder's security: cash, cashier's check made payable to the Town, certified check made payable to the Town, or a bidder's bond. The amount of bidder's security provided must equal at least ten (10) percent of the total bid price for the base bid and the additive or deductive items listed in this notice. The successful bidder must submit to the Town complete, executed copies of all required documents within ten (10) working days of receiving written notice of award of the project. The successful Bidder's security will be forfeited to the Town if the Bidder fails to submit all required documents. Such required documents include, but are not limited to, a payment or labor and materials bond in an amount of at least 100 percent of the amount payable by the terms of the project contract and that satisfies the requirements of California Civil Code Section 3248, and a performance bond in an amount of at least 100 percent of the amount payable by the terms of the contract. All project bonds must be executed by an admitted surety insurer in accordance with applicable law and acceptable to the Town. Bids shall be marked: "Bid of (Contractor) for MORRISON RD PAVEMENT REHABILITATION, Project No. 9040-45-MOR, along with date and time of bid opening.

Bidders are hereby notified that provisions of the Labor Code of the State of California, regarding the prevailing wages shall be applicable to the work to be performed under this

contract. Pursuant to Labor Code Section 1773 the general prevailing wage rates have been determined by the Director of the California Department of Industrial Relations and appear in the California Prevailing Wage Rates, copies of which are on file with the Town Clerk of the Town of Ross and are available to interested parties on request. Future effective wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but are not printed in such publication.

The work covered by this agreement is a "public work" as that term is defined in California Labor Code, Division 2, Part 7, and Chapter 1. Bidders are advised that if they intend to use a craft or classification not shown on the general wage determination, they may be required to pay the wage rate of that craft or classification most clearly related to it as shown in the general determinations.

Contractor shall have the responsibility to comply with applicable provisions of Section 1775.5 of the Labor Code for all apprentice occupations. In the event Contractor willfully fails to comply with the applicable provisions of Section 1775.5, Contractor shall forfeit as a civil penalty the sum of \$50.00 for each calendar day of non-compliance, which money may be withheld by Town pursuant to the provisions of Labor Code Section 1775.5.

Contractor may elect to receive 100 percent of payments due under the contract from time to time, without retention of any portion of the payment by the Town of Ross, by depositing securities of equivalent value to the retention amount in accordance with the provisions of Section 22300 of the Public Contracts Code. Such securities, if deposited by the Contractor, shall be valued by the Director of Public Works whose decision of such valuation shall be final.

All Bidders shall be licensed under the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California to do the type of work contemplated in the project and shall be skilled and regularly engaged in the general class or type of work called for under the Contract.

Any bidder or contractor not properly licensed with the State of California shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. Failure of the bidder to obtain proper and adequate licensing for an award of the contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder. Each bidder who has not done work similar in nature for the Town of Ross shall submit with this bid a statement setting forth his/her/its experience and business standing. Along with the statement, she/he/it shall list three or more projects that he/she/it has constructed, showing their original bid costs and overall costs when constructed, the names, addresses and current telephone number(s) of the owners of the said projects, whether

the bidder has been a party to litigation or arbitration involving construction activities, the names and jurisdiction of all such litigation or arbitration and whether the bidder has ever filed for bankruptcy or become insolvent.

The Town reserves the right to reject any or all bids, or to accept only a portion of certain items of the bid or to waive any informality in the bid.

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

BY SUBMITTING A BID IN RESPONSE TO THIS NOTICE INVITING BIDS, THE BIDDER SHALL BE CONCLUSIVELY DEEMED TO HAVE READ, UNDERSTOOD AND AGREED WITH ALL OF THE INFORMATION AND MATERIALS CONTAINED IN THE BID DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE CONTRACT, THE GENERAL CONDITIONS, THE SPECIAL CONDITIONS, THE REQUIRED INDEMNIFICATION OBLIGATION, THE REQUIRED NATURE AND AMOUNT OF INSURANCE AND THE ENDORSEMENTS AND CERTIFICATES EVIDENCING SAID INSURANCE. SEE ALSO EXHIBIT "A" ATTACHED HERETO AND INCORPORATED BY THIS REFERENCE.

If a bidder has any problems in understanding or accepting any of the terms and/or conditions specified in the bid documents, said bidder must contact the person whose name appears below at the below specified number at least five working days prior to the bid opening date. Otherwise, it will be presumed that bidder agrees with, understands and has read all the bid documents above specified.

By: /s/ Richard Simonitch
Public Works Director / Town Engineer
(415) 453-1453 EXT 115

SECTION III - GENERAL PROVISIONS

GENERAL PROVISIONS

1.0 DEFINITIONS

Whenever used in the General Provisions or other parts of the contract Document, the following terms will have these meanings:

- 1.1. Addenda: Written or graphic instruments issued prior to the opening of bids, which make additions, deletions, or revisions to the Contract Documents.
- 1.2. Agreement: The agreement between the Town and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents.
- 1.3. Application for Payment: The form accepted by the Director of Public Works which is to be used by the Contractor to request progress payments or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4. Bid: The written offer of a Bidder, executed pursuant to the Bid Package, to perform the Work covered by the Agreement for a specific price.
- 1.5. 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 the bidders on the project.
- 1.6. Change Order: Amendment to the Agreement, the Project Plans, Specifications or other Contract Document in accordance with Article 10, Changes in the Work which is signed by the Contractor and the Town.
- 1.7. Town: The Town of Ross.
- 1.8. Clarification: A document issued by the Town's Director of Public Works to the Contractor that interprets the requirements(s) and/or design intent of the Contract Documents, which may not represent an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times.
- 1.9. Contract Documents: All those documents listed in the Project Agreement as comprising the entire agreement between the Town and Contractor.
- 1.10. Contract Time: Construction Days as stated in the Contract or established by a definite for completion of the Work.

- 1.11. Contractor: The successful bidder for the Project and party to the Project Agreement with the Town as specified in the Project Agreement.
- 1.12. Date of Completion: The date certified in writing by the Town when the Work has been satisfactorily completed in accordance with the Contract Documents.
- 1.13. Day: Unless otherwise specified in the Contract Documents, days mean working days.
- 1.14. Director of Public Works: Town Director of Public Works is the designated site representative of the Town. The Director of Public Works is authorized and empowered to decide matters relating to the interpretation of the Contract Document and the execution and progress of the Work. The authority granted does not include unilateral decisions by the Director of Public Works to expend additional sums of money (i.e. Change Orders, etc.)
- 1.15. Jobsite: The areas in and around the Work designated by the Town for operations by the Contractor.
- 1.16. Liquidated Damages: The amount prescribed in the Contract Documents to be paid to the Town, or to be deducted from any payments due or to become due the Contractor for each calendar day or other specified time of delay in completing the whole or any specified portion of the Work beyond the Contract Time allowed in the Contract; such compensation shall not be construed as a penalty.
- 1.17. Notice of Award: The written notice from the Town to the successful Bidder signifying the Town's acceptance of the Bid.
- 1.18. Notice to Proceed: The written notice from the Town to the Contractor authorizing and directing the Contractor to proceed with the Work and establishing the date on which the Contract Time begins.
- 1.19. Project: The MORRISON RD PAVEMENT REHABILITATION, as described in the Specifications and Project Plans.
- 1.20. Specifications: Those portions of the Contract Documents, including any addenda prepared by the authorized Town representatives and issued prior to bid opening, which consist of written descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work.
- 1.21. 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 Specifications and/or Project Plans.

- 1.22. 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 Specifications and Project Plans in accordance with the Contract Documents and applicable law.

2.0 PRELIMINARY MATTERS

2.1 Delivery of Contract Documents

The successful bidder must submit to the Town complete, executed copies of all documents specified in the Contract Checklist within ten (10) working days of receiving written Notice of Award of the Project. Bidder's security of any successful bidder that fails to do so will be forfeited to the Town.

2.2 Business License

The successful bidder and any subcontractors and others engaged in performance of the Project must have valid local business license(s), as applicable, before commencing work on the Project. The Contractor shall submit proof of a valid license within ten (10) working days of receiving written Notice of Award of the project.

2.3 Commencement of Contract Times; Notice to Proceed

Upon verifying that the successful bidder has provided complete, executed copies of all documents, an authorized Town representative will execute the Project contract, and the Town will issue to the successful bidder a notice to proceed specifying the Project commencement date.

The Contractor shall commence work within five (5) working days following the Director of Public Work's Notice to Proceed. Said date shall be considered the first day of work for the purpose of counting work days.

2.4 Time for Completion

The time allowed for completion of the work shall be thirty (30) working days.

2.5 Pre-Construction Meetings

Prior to the issuance of the Notice to Proceed, a pre-construction meeting will be held at the Town 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 execution of and the satisfactory completion of the project as required. The Contractor is required to attend the pre-construction meeting which may include a site visit. The Contractor's representative(s) at this meeting shall include all major superintendents for the work and may include major subcontractors. The Contractor's initial schedule, submittals for shop drawings, and plan of operations will be reviewed and finalized at the pre-construction meeting.

3.0 CONTRACT DOCUMENTS

3.1 Documents Furnished by the Town

The Town will furnish to the Contractor, free of charge, TWO (2) sets of prints of the Project Plans and Specifications for execution of the Work. Throughout the performance of the Work, the Contractor must keep one copy of the Project Plans and Specifications in good order and available for review by the Director of Public Works, the Designer and any other Town contractors or representatives.

3.2 Intent

The Contract Documents comprise the entire agreement between the Town and the Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

All Work shall be governed by and done in accordance with the following:

3.2.1 Contract Documents.

3.2.2 Title 15 of the Town of Ross Municipal Code.

3.3 Order of Precedence of Contract Documents

3.3.1 In the event of a conflict between or among the Contract Documents, precedence will be in the following order:

- a. The Agreement and change orders and other amendments to the agreement signed by authorized representatives of the Town and the Contractor.

- b. The Special Provisions, addenda to the Special Provisions signed by authorized representatives of the Town and issued prior to bid opening, Equal Product Proposals accepted by the Town and signed by authorized Town representatives prior to bid opening, and change orders and other amendments to the Specifications signed by authorized representatives of the Town and the Contractor.
- c. The Project Plans, addenda to the Project Plans prepared by authorized representatives of the Town and issued prior to bid opening, Equal Product Proposals accepted by the Town and signed by authorized Town representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the Town and the Contractor.
- d. The General Provisions, change orders and other amendments to the General Provisions signed by authorized representatives of the Town and the Contractor.
- e. Title 15 of the Town of Ross Municipal Code.
- f. All other Ross Municipal Code Sections.
- h. Notice Inviting Bids.
- i. Instructions to Bidders.
- j. The successful bidder's completed Proposal Form and Bidder's Sheet.
- k. The successful bidder's completed Contractor License Information.
- l. The successful bidder's completed List of Proposed Subcontractors.
- m. The successful bidder's Workers Compensation Insurance Certification.
- n. The successful bidder's completed Non-collusion Affidavit.
- o. The successful bidder's Debarment Certification.

- p. The successful bidder's completed Certificates of Insurance and Endorsements.
- q. The successful bidder's executed Performance Bond.
- r. The successful bidder's executed Payment Bond.
- s. Executed Escrow for Deposit Agreement, if applicable.
- t. Change Order Form.
- u. The Defective Material and Workmanship Bond form included in the bid package that the Contractor must execute prior to release of final payment under the Contract.
- v. The successful bidder's Qualification Statement, if any.
- w. The successful bidder's signed Signature Form.

3.4 Amending Contract Documents

Town reserves the right to modify said plans and specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the Town's Engineer and appropriate adjustments are made to the contract price. Town reserves the right to make reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. In addition, the Town may make changes in this agreement or the plans and specifications in the course of construction to bring the completed work into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after the agreement has been awarded or entered into. The Contractor shall be paid for the changes in accordance with Article 11.

3.5 Ownership of Documents

All documents furnished by the Town, including, but not limited to, the Specifications, Project Plans, and any copies, are the property of the Town. Documents furnished by the Town may not be used on any other work. All documents furnished by the Town must be returned to Town upon completion of the Work.

3.6 Specifications and Project Plans

- 3.6.1 The Specifications and Project Plans are complementary and intended to mutually describe the Work necessary to complete the Project in accordance with the Contract Documents.
- 3.6.2 Anything mentioned in the Specifications and not shown on the Project Plans, or shown on the drawings and not mentioned in the specifications, shall be of life effect, as if shown or mentioned in both. In any case of difference in the figures, drawings and specifications, the matter shall be promptly submitted to the Director of Public Works who shall make a decision in writing. Any adjustment by the Contractor without this determination shall be at his/her own risk.
- 3.6.3 If the Contractor, in the course of the Work, finds any errors or inconsistencies, it shall be his/her duty to immediately inform the Director of Public Works in writing. Any work done after such discovery, until authorized by the Town will be done at the Contractor's risk.
- 3.6.4 Revised copies of all drawings and specifications pertinent to the Work will be furnished by the Director of Public Works, and the Contractor shall maintain an up-to-date, completely revised set of drawings and specifications on the job site. The Contractor shall keep an accurate record of all deviations from the approved design drawings and specifications which may occur in the Work as actually constructed, and shall submit to the Director of Public Works prior to request for final contract payment, drawings and specifications showing complete information as required for the correction of the drawings to the "record" condition.
- 3.6.5 Additional drawings necessary for the prosecution of the Work will be furnished by the Director of Public Works. The Contractor shall request any additional instructions needed and shall do no Work without drawings and instructions.

4.0 SITE OF THE WORK

4.1 Availability of Lands

- 4.1.1 The Town will furnish, as indicated in the Contract Documents, the lands upon which the work is to be performed, rights-of-way and easements for access thereto, and such other lands which are

designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the Town, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the Contractor exclusive occupancy of the lands or rights-of-way provided. The Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment; provided, that the Contractor shall not enter upon nor use any property not under the control of the Town until a written temporary construction easement agreement has been executed by the Contractor and the property owner, and a copy of said easement furnished to the Director of Public Works prior to said use; and the Town will not be liable for any claims or damages resulting from the Contractor's trespass on or use of any such properties. The Contractor shall provide the Town with a signed release from the property owner confirming that the lands have been satisfactorily restored upon completion of the Work.

4.2 Reports of Physical Conditions

- 4.2.1 Subsurface Explorations: Reference is made to any Technical Supplement for identification of those reports of explorations and tests of subsurface conditions at the Site that have been utilized by the Director of Public Works in the preparation of the Contract Documents.
- 4.2.2 Existing Structures: Reference is made to any Technical Supplement for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except underground Utilities referred to in Article 4.3 herein) which are at or contiguous to the Site that have been utilized in the preparation of the Contract Documents.
- 4.2.3 The Town makes no representation as to the completeness of the reports or drawings referred to in Article 4.2.1 or 4.2.2 above or the accuracy of any data or information contained therein. The Contractor may rely upon the accuracy of the technical data contained in such reports and drawings. However, the Contractor may not rely upon any interpretation of such technical data, including any interpolation or extrapolation thereof, or any non-technical data, interpretations, and opinions contained therein.

4.3 Physical Conditions – Underground Utilities

- 4.3.1 The information and data indicated in the Contract Documents with respect to existing underground Utilities at or contiguous to the Site are based on information and data furnished to the Town or the Director of Public Works by the owners of such underground Utilities or by others. Unless it is expressly provided in any Supplementary General Conditions will not be responsible for the accuracy or completeness of any such information or data, and the Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all underground Utilities indicated in the Contract Documents, for coordination of the Work with the owners of such underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which are deemed to have been included in the Contract Price.
- 4.3.2 Attention is directed to Section 8-1.10 of the State Specifications and these special provisions.
- a. It is not the intent of the plans to show the exact locations of existing underground utilities or structures and the Director of Public Works assumes no responsibility therefor. Whenever any such utilities are indicated thereon the Contractor shall be responsible for verifying their actual location and depth in the field, by potholing if necessary. The Contractor shall be responsible for any damage to utilities shown on the plans, or as specified herein, as a result of his/her operations.
 - b. Existing utilities in the easements on private property are not shown on the plans; the contractor shall be responsible for locating said utilities prior to any construction and shall keep said utilities continuously functioning during the course of the work. If the contractor for his/her own reasons needs to shut off or relocate any of said utilities, the Contractor shall give advance notice to and coordinate with the owner of the property and the occupant.
 - c. Equipment operating under PG&E electric and Pacific Bell communications lines shall observe minimum clearance from the lines, and all other requirements, as set forth in Article 86 of the Electrical Safety Orders of the State division of Industrial Safety and Pacific Bell requirements.
- 4.3.3 If applicable the Contractor shall keep the existing drainage system and sanitary sewer system fully functional at all times. If the

Contractor for his/her own reasons desires to block off any portion of these systems, he shall construct a bypass system capable of handling the flow. This bypass system, if constructed, will be for the convenience of the Contractor and shall be constructed at his/her own expense.

- 4.3.4 The Contractor shall exercise care not to damage existing property including but not limited to trees, shrubs and landscaping outside the work area. Any damage caused by the contractor shall be replaced by the Contractor at his/her expense.
- 4.3.5 Three (3) days in advance of commencing any excavation, the Contractor shall notify Underground Service Alert (800) 642-2444.
- 4.3.6 Full compensation for complying with the above provisions shall be considered as having been included in the price paid for various contract items of work and no separate payment will be made thereafter.

4.4 Differing Site Conditions

- 4.4.1 The Contractor is advised to keep himself fully appraised throughout the performance of the contract of existing conditions at the site, including the status and progress of other work threat, which may affect the performance of this contract. The Contractor shall verify all necessary measurements and elevation in the field.
- 4.4.2 The Contractor shall notify the Director of Public Works, in writing, of the following unforeseen conditions, hereinafter called differing Site conditions, promptly upon their discovery (but in no event later than fourteen (14) days after their discovery) and before they are disturbed:
 - a. Subsurface or latent physical conditions at the Site of the Work differing materially from those indicated, described, or delineated in the Contract Documents, including those reports discussed in Section 4.2, 4.3, and 4.5.
- 4.4.3 The Director of Public Works will review the pertinent conditions and determine the necessity of obtaining additional explorations or tests with respect thereto.
- 4.4.4 If the Director of Public Works concludes that because of newly discovered conditions a change in the Contract Documents is

required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the difference.

4.4.5 In each such case, an increase or decrease in the Contract Price or an extension or shortening the Contract Times, or any combination thereof, will be allowable to the extent that they are attributable to any such difference. If the Director of Public Works and the Contractor are unable to agree as to the amount or length thereof, a claim may be made therefore as provided in Articles 17.20.

4.4.6 The Contractor's failure to give notice of differing Site conditions within fourteen (14) days of their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

4.5 Hazardous Materials

4.5.1 Town shall be responsible for any Asbestos, Hazardous Waste, Petroleum, or Radioactive Material uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the work and which may present a substantial danger to persons or property exposed thereto in connection with the work at the Site. Town will not be responsible for any such material brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- a. Upon discovery of any Asbestos, Hazardous Waste, Petroleum, or Radioactive Material, the Contractor shall immediately stop all work in any area affected thereby (except in an emergency as required by Article 6.13) and notify Director of Public Works (and therefore confirm such notice in writing). Contractor shall not be required to resume any work in any such affected area until after Town has obtained any required permits related thereto and delivered to Contractor special written notice. Such written notice will specify that such condition and any affected area is or has been rendered safe for the resumption of the work or specify any special conditions under which the work may be resumed safely. If the Director of Public Works and Contractor cannot agree as to entitlement to or the amount or extent of adjustment, if any, in Contract Price or Contract Times as a result of such work stoppage or such special conditions under which work is

agreed by Contractor to be resumed, either party may make a claim therefore as provided in Articles 17.20.

- b. If, after receipt of such special written notice, Contractor does not agree to resume such work based on a reasonable belief it is unsafe, or does not agree to resume such work under special conditions, the Director of Public Works may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If the Director of Public Works and Contractor cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the work then either party may make a claim therefore as provided in Articles 10 and 11. Town may have such deleted portion of the work performed by Town's own forces or others.

4.5.2 The provisions of Articles 4.2, 4.3, and 4.4 are not intended to apply to Asbestos, Petroleum, Hazardous Waste, or Radioactive Material uncovered or revealed at the Site.

4.5.3 Contractor shall comply with all federal, state and local regulations and laws pertaining to hazardous materials or hazardous substances as those terms are defined by any such law or regulation. Contractor shall indemnify, hold harmless, release and defend Town, its officers, employees and agents from and against any and all actions, claims, demands, damages, disabilities, losses, costs of clean-up, remediation and/or expenses, including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including Contractor arising out of or in any way connected with Contractor's failure to comply with said hazardous substance and/or hazardous materials laws and regulations.

4.5.4 Contractor agrees that when work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, that the Contractor shall promptly notify the public Town in writing, before conditions are disturbed, of any of the following:

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

- b. Subsurface or latent physical conditions at the site differing from those indicated.
 - c. 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.
- 4.5.5 Upon receipt of the notice specified in Article 4.5.1(a) above, the Town shall promptly investigate the conditions reported, and if the Town finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the Town shall issue a change order under the procedures described herein.
- 4.5.6 In the event that a dispute arises between the Town and the Contractor as to whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Contractor and Town.
- 4.5.7 Contractor shall make a diligent visual and, where reasonably indicated, other investigatory and exploratory inspections of the area, property and/or site upon which the work shall be performed. In addition, the Contractor shall make those investigations and inspections reasonably required of the area surrounding the site on which the work will be performed where that surrounding area may be used by the Contractor or affected by the Contractor's work and determine whether or not said surrounding area, as affected by the performance of the work presents a danger or hazard to person or property. If such a danger or hazard is likely to be caused by the performance by the Contractor of the work, the Contractor shall take those steps reasonably necessary to eliminate said danger and hazard, to the extent reasonably feasible, and the Contractor shall indemnify the Town in accordance with Article 6.19, below, for any liability arising from Contractor's failure to comply with this Article from injury or damage to property or person located in said surrounding area caused by Contractor's activities hereunder.

5.0 BONDS AND INSURANCE

5.1 Bonds

- 5.1.1 Contractor shall, prior to the execution of the contract, furnish two bonds in a form approved by the Town, one in the amount of One Hundred Percent (100%) of the contract price to guarantee the faithful performance of the work, and one in the amount of One Hundred Percent (100%) of the contract price to guarantee payment of all claims for labor and materials furnished.
- 5.1.2 Town shall not be required to exonerate any surety, release any security relating to satisfactory completion of the improvements until acceptance of proposed public improvements by the Town or, in the case of improvements which will not be dedicated to and accepted by Town, until the improvements have passed final inspection by Town. In addition, release of security or exoneration of sureties will be predicated upon the receipt of required maintenance and/or warranty agreements and security therefor.
- 5.1.3 The surety for such security shall be currently admitted to transact surety insurance by the California Department of Insurance and shall carry a Best's rating of no less than A+. This contract shall not become effective until such bonds are supplied to and approved by the Town.

5.2 Insurance

- 5.2.1 Contractor shall obtain insurance acceptable to the Town in a company or companies acceptable to the Town and with a Best Rating of no less than A: XIII. The Contractor shall furnish an original or certified copy of insurance certificates and endorsements to the Town at the time Contractor returns the executed contract. The proper insurance shall be provided within five (5) days of the date of mailing of the notice that the contract has been awarded and prior to the Town executing the contract and issuing a notice to proceed. The Contractor shall not commence work nor shall she/he allow his/her employees or Sub-Contractors or anyone to commence work until all insurance required hereunder has been submitted and approved and a notice to proceed has been issued.
- 5.2.2 Without limiting Contractor's indemnification provided hereunder, Contractor shall take out and maintain at all times during the life of

this contract, up to the date of acceptance of the work by the Town, the following policies of insurance:

- a. Worker's Compensation insurance to cover its employees and the Contractor shall require all Sub-Contractors similarly to provide Worker's Compensation insurance as required by the Labor Code of the State of California for all of the Sub-Contractor's employees. All Worker's Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the Town.
- b. In the event any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation Statutes, the Contractor shall provide, and shall cause all Sub-Contractor's to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to Town and shall provide that it will not be canceled without first giving thirty (30) days notice to Town.
- c. Contractor's worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the Town of Ross, its officers and employees when acting within the scope of their appointment or employment."
- d. Commercial General Liability and Automobile Liability insurance coverage which shall be at least as broad as:
 - i. Insurance Services Office Commercial Liability coverage (occurrence form CG 00 01).
 - ii. Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 (any auto). Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

5.2.3 Contractor shall maintain insurance limits no less than:

- a. General Liability: \$2,000,000 per occurrence for bodily injury, personal and property damage. If Commercial General Liability Insurance or other form with a general aggregate is used, either the general aggregate limit shall apply separately

to this contract or the general aggregate limit shall be twice the required occurrence limit.

- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- c. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

5.2.4 Each Policy required herein shall be endorsed with the following language:

- a. The Town of Ross, its officers, officials, employees, agents and volunteers are named as additional insureds for all liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor and; with respect to liability arising out of the work or operations, whether ongoing or completed, by or on behalf of the named insured.
- b. Except for the limits of liability, the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.
- c. The insurance provided herein is primary as respects the Town, its officers, officials, employees, agents and volunteers, and no insurance held or owned by the Town of Ross shall be called upon to contribute to a loss.
- d. The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the Town.
- e. This policy does not exclude explosion, collapse, underground excavation hazards or removal of lateral support.
- f. Contractor shall furnish the Town with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, including

endorsements affecting the coverage required by these specifications at any time.

- 5.2.5 In the event the work involves the construction of a building, bridge or other structure, Builder's Risk "All Risk" completed value insurance coverage (including flood but unless otherwise specified in the bid documents excluding earthquake and tidal wave) upon the entire project and including completed work and work in progress shall be obtained and maintained by Contractor throughout the term of this Agreement. The Town of Ross shall be named as an additional insured. The insurer shall waive all rights of subrogation against the Town. The policy shall be endorsed to provide that it will not be canceled without giving thirty (30) days prior written notice to Town by mail. Evidence of said insurance shall be provided to the Town as a condition precedent to the effectiveness of this Agreement.
- 5.2.6 Any deductible or self-insured retentions must be declared to and approved by Town before the Work is begun.

6.0 CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision and Superintendence

- 6.1.1 The Contractor shall supervise, inspect, and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction and all safety precautions and programs incidental thereto. The Contractor shall be responsible to see that the completed work complies accurately with the Contract Documents.
- 6.1.2 The Contractor shall designate in writing and keep on the Site at all times during the performance of the work a technically qualified, English-speaking superintendent, who is an employee of the Contractor and who shall not be replaced without written notice to the Director of Public Works. The superintendent will be the Contractor's representative at the Site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

6.1.3 The Contractor's superintendent shall be present at the Site at all times while work is in progress and shall be available by phone for emergencies 24 hours per day, 7 days per week. Failure to observe this requirement shall be considered suspension of the Work by the Contractor until such time as such superintendent is again present at the Site.

6.2 Labor, Materials, and Equipment

6.2.1 The Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall furnish, erect, maintain, and remove the construction facility and any required temporary works. The Contractor shall at all times maintain good discipline and order at the Site.

- a. Except as otherwise provided in this Article, the Contractor shall receive no additional compensation for overtime work, i.e., work in excess of eight (8) hours in any one (1) calendar day or forty (40) hours in any one calendar week, even though such overtime work may be required under emergency conditions and may be ordered by the Director of Public Works in writing. Additional compensation will be paid to the Contractor for overtime work only in the event extra work is ordered by the Director of Public Works and the Change Order specifically authorizes the use of overtime work and then only to such extent as overtime wages are regularly being paid by the Contractor for overtime work of a similar nature in the same locality.
- b. All increased costs of inspection and testing performed during overtime work by the Contractor which is allowed solely for the convenience of the Contractor shall be borne by the Contractor. The Town has the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the Contractor.
- c. Unless otherwise specified in the Contract Documents, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, lubricants, power, light, heat, telephone, water, sanitary facilities, and all other facilities, consumables, and incidentals necessary for the furnishing, performance, testing, start-up, and completion

of the Work.

- d. All materials and equipment incorporated into the Work shall be of specified quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the Town. If required by the Director of Public Works, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provisions of any such instructions will be effective to assign to the Town or any of its consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the Work.
- e. Equipment or material which is provided, but fails to comply with the requirements of the Contract Documents, shall be removed and replaced with complying equipment or material, at the Contractor's sole expense, provided however, that if the progress of the work is such as to make removal impractical, the Town shall have the right to accept it and reduce the contract price by an amount equivalent to the difference in its value and the complying equipment or material. The Director of Public Works may perform such factory or field tests as are deemed necessary to verify that equipment or material meets the performance standards set forth in the Contract Documents. The Contractor shall be permitted to witness such tests.

6.3 Schedule

- 6.3.1 Prior to the commencement of work, the Contractor shall furnish an initial schedule stating the order and tentative dates in which the work will be performed. This schedule shall be updated on a day-to-day basis.
- 6.3.2 The Contractor shall comply with the schedule requirements.
- 6.3.3 If at any time during the performance of the Work, in the opinion of the Director of Public Works, the Contractor's progress on any phase

of the work shall fall behind that necessary to enable the Contractor to complete it by the date or dates guaranteed in the Contractor's bid and the schedule requirements, (as adjusted for the extension of time, if any, to which the Contractor is entitled under the provisions of Article 12) or if the Work, tools, plant or equipment of the Contractor appears to be or is insufficient, inefficient or inappropriate to secure the quality of the Work required, the Director of Public Works may order the Contractor, at no extra expense to the Town, to take such action as the Director of Public Works deems necessary in order:

- a. To meet those completion dates, including but not limited to, working additional or longer shifts and employing more labor and equipment.
- b. To increase the efficiency of, improve the character of, augment the number of or to substitute new tools, plant or equipment of the Contractor as the case might be so as to secure the quality of Work required.

6.3.4 The Contractor must conform to any such order, but the failure of the Director of Public Works to so order shall not relieve the Contractor of his/her obligation to secure the Work within the time schedule and of the quality required by the Contract Documents.

6.3.5 If the progress of the Work falls behind schedule, the Contractor shall submit a recovery program to the Director of Public Works for bringing the work back on schedule so the critical dates will be maintained. Any overtime or multiple shift operations required to meet the scheduled and guaranteed completion dates shall be provided at no additional cost to the Town. The Contractor shall submit his/her recovery program with his/her progress payment request to the Director of Public Works who shall approve the recovery schedule and program prior to processing the progress payment request.

6.4 Substitutes or "Or Equal" Items

Contractor shall submit proposed substitutes or "or equal" items in accordance with the Bidding Requirements. No request for substitution of an "or equal" item will be considered by the Director of Public Works after award of the Contract.

6.5 Concerning Sub-Contractors, Suppliers, and Others

- 6.5.1 The Contractor shall perform, directly and without subcontracting, not less than twenty-five percent (25%) of the Work, to be calculated on the basis of the total contract price.
- 6.5.2 The Contractor shall be responsible to the Town for the acts and omissions of its Subcontractors, Suppliers, and their employees to the same extent as Contractor is responsible for the acts and omissions of its own employees. Nothing contained in this Article shall create any contractual relationship between any Subcontractor and the Town nor relieve the Contractor of any liability or obligation under the Contract Documents. The Contractor shall include these General Provisions and the Supplementary General Provisions as part of all its subcontract and supply agreements.
- 6.5.3 Bids must be in accordance with the requirements of the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100 and following. Bids must include a completed list of proposed subcontractors on the form included in the bid package. In accordance with California Public Contract Code Section 4104, completed lists of proposed subcontractors must include the name, business location, the portion (type or trade), and dollar amount of the Project work to be subcontracted for each subcontractor that will perform a portion of the Project work (including special fabrication and installation of a portion of the work) valued in excess of one half of one percent of the total Project bid price. If the Project work includes construction of streets or highways, the completed list of proposed subcontractors must include the subcontractor name, business location, type of work and dollar amount to be subcontracted for each subcontractor that will perform a portion of the Project work (including special fabrication and installation of a portion of the work) valued in excess of one half of one percent of the total Project bid price, or ten thousand dollars (\$10,000), whichever is greater.
- 6.5.4 In accordance with California Public Contract Code Section 4106, for any portion of the Project work with a value of more than one half of one percent of the total Project bid price for which no subcontractor is listed, or for which more than one subcontractor is listed, bidders certify by submitting their bids that they are qualified to perform that portion of the Project work and that they will perform that portion of the Project work with their own forces. Bidders may not substitute another subcontractor for a subcontractor listed in their bid except as

permitted by the Town in accordance with Section 4107 and following of the California Public Contract Code.

- 6.5.5 Subcontractors of any tier shall not subcontract any part of the Work without first obtaining the approval of the Contractor and the Town. All requests for subcontract or sub-contract approval shall be made in writing.

6.6 Permits

The Contractor shall obtain and pay for all construction permits and licenses from the agencies having jurisdiction, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements shall not be made the basis for claims for additional compensation by Contractor. When necessary, the Town will assist the Contractor, in obtaining such permits and licenses. The Contractor shall pay all charges of utility owners for inspection or connections to the Work.

6.7 Patent Fees and Royalties

The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work or the incorporation in the work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the Director of Public Works its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed by the Director of Public Works in the Contract Documents. The Contractor's indemnification obligation under this Article 6.7 for all claims and liabilities arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work resulting from the incorporation in the work of any invention, design, process, product or device not specified in the Contract Documents shall be in accordance with Article 6.19 of these General Provisions.

6.8 Laws and Regulations

The Contractor must comply with all Laws and Regulations which in any manner affect those engaged or employed on the work, the materials used in the work and, or the conduct of the work. If any discrepancy or inconsistency should be discovered between the Contract Documents and any such Laws or Regulations, the Contractor shall report the same in writing to the Director of Public Works. Any particular Law or Regulation

specified or referred to elsewhere in the Contract Documents shall not in any way limit the obligation of the Contractor to comply with all other provisions of federal, state, and local laws and regulations. The Contractor's indemnification obligations for all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by Contractor or by its employees, Subcontractors or Suppliers shall be in accordance with Article 6.19 of these General Provisions.

6.9 Taxes

The Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by the Contractor in accordance with the laws and regulations of the place of the Project which are applicable during the performance of the work.

6.10 Use of Permits

The Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site, the land and areas identified in and permitted by the Contract Documents, and the other land and areas permitted by Laws and Regulations, rights-of-way, permits, and easements. The Contractor shall assume full liability and responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the work. Should any claim be made against the Town by any such owner or occupant because of the performance of the work, the Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim through litigation at the Contractor's sole liability expense. The Contractor's indemnification obligations for all claims and liability, arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any owner or occupant against the Town, its consultants, sub-consultants, and the officers, directors, employees and agents of each and any of them to the extent caused by or based upon the Contractor's performance of the work shall be in accordance with Article 6.19 of these General Provisions.

6.11 Safety and Protection

6.11.1 The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. All persons at the Site and other persons and organizations who may be affected thereby;
- b. All the work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- c. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of the performance of the work.

6.11.2 The Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property or to the protection of persons or property from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and utilities when execution of the work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. Contractor's duties and responsibilities for safety and for protection of the work shall continue until such time as all the work is completed and Director of Public Works has issued a notice to the Contractor in accordance with Article 14.9 that the work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.11.3 The Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.11.4 Materials that contain hazardous substances or mixtures may be required on the work. A Material Safety Data Sheet shall be made available at the Site by the Contractor for every hazardous product used.

6.11.5 Material usage shall strictly conform to OSHA safety requirements and all manufacturer's warnings and application instructions will be listed on the Material Safety Data Sheet and on the product container label.

6.11.6 The Contractor shall be responsible for the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.11.7 The Contractor shall notify the Director of Public Works if it considers a specified product or its intended use to be unsafe. This notification must be given to the Director of Public Works prior to the product being ordered, or if provided by some other party, prior to the product being incorporated in the work.

6.11.8 As part of its efforts to offer the least possible obstruction and inconvenience to the public, the Contractor shall perform the following tasks:

- a. In order to expedite the passage of public traffic through, or around, the work and where ordered by the Director of Public Works, the Contractor shall install signs, lights, flares, and barricades, and shall furnish a minimum of two flaggers for the sole convenience and direction of public traffic. Also, where directed by the Director of Public Works, the Contractor shall provide and station competent flaggers whose sole duty shall consist of directing the movement of traffic through and around the work. Where directed by the Director of Public Works, the flaggers shall be equipped with two-way radios.
- b. The Contractor shall hand deliver a written notice, approved by the Director of Public Works, to all residences and/or businesses fronting each Work location, and as may be indicated on the plans, detailing the scope and time schedule for upcoming Work. This notice shall be delivered five (5) calendar days prior to commencing Work at any particular location.
- c. Streets shall be posted with temporary "NO PARKING" signs. Signs shall be supplied by the Contractor and shall clearly indicate the date and hours that parking will not be allowed. Signs shall be posted forty-eight (48) hours in advance of parking restrictions.
- d. A Traffic Control and Management Plan and the written notice to residents shall be submitted to the Director of Public Works for approval a minimum of seven (7) calendar days prior to proposed commencement.

6.12 Protection of Property

6.12.1 The Contractor shall take all necessary precautions to protect the Work against adverse weather conditions.

6.12.2 The Director of Public Works may order the Contractor to suspend any Work that may be subject to damage by weather conditions. No extra payment will be made for any such delay due to suspension of Work.

6.12.3 The above stipulation shall not relieve the Contractor of his/her responsibility for damages done by the weather conditions when, in the opinion of the Director of Public Works, proper protection of the Work was not made.

6.13 Emergencies

In emergencies affecting the safety or protection of persons or the work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Director of Public Works, is obligated to immediately act to prevent threatened damage, injury, or loss. Contractor shall give Director of Public Works prompt written notice if Contractor believes that any significant changes in the work or variations from the Contract Documents have been caused thereby. If Director of Public Works determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order will be issued to document the consequences of such action.

6.14 Submittals

6.14.1 After checking and verifying all field measurements, the Contractors shall submit to the Director of Public Works for review all shop drawings.

6.14.2 The director of Public Works' review will be only to determine if the items covered by the submittals will, after installation or incorporation in the work, generally conform to the Contract Documents and with the design concept of the completed Project.

6.14.3 The Contractor shall also submit to the Director of Public Works for review all samples.

6.14.4 Before submittal of each shop drawing or sample, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each shop drawing or sample with other shop drawings and samples and with the requirements of the work and the Contract Documents.

6.15 Continuing the Work

6.15.1 The Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with the Owner. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and the Owner may otherwise agree in writing.

6.16 Contractor's General Warranty and Guarantee

6.16.1 Contractor guarantees all of the Work for one year from the date the Town 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 Town. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the contract or at law or equity, the Town 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 Defective Material and Workmanship bond for the cost of making good such defects and for the Town'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 Town.

6.16.2 Contractor's obligation to perform and complete the work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the work in accordance with the Contract Documents:

- a. Observations by Director of Public Works;
- b. Recommendation by Director of Public Works or payment by Town of any progress or final payment;
- c. The issuance of a Certificate of Completion by the Town;
- d. Use or occupancy of the work or any part thereof by the Town;

- e. Any acceptance by Town or any failure to do so;
- f. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Director of Public Works pursuant to Article 6.14;
- g. Any inspection, test, or approval by others; or
- h. Any correction of Defective Work by Town.

6.17 As-Built Drawings

6.17.1 The Contractor shall mark-up clearly and legibly one set of paper prints to show the As-Built conditions. They shall include all information as shown on the contract set of clean drawings and a record of all deviations, modifications, or changes from those drawings, however minor, which were incorporated in the work, all additional work not appearing on the contract drawings and all changes which are made after the final inspection of the contract work. These As-Built marked prints shall be kept current and available on the job site at all times. All changes from the contract plans which are made in the work or additional information which might be uncovered in the course of construction shall be accurately and neatly recorded as they occur by details and notes. No construction work shall be concealed until it has been inspected, approved and recorded. The As-Built marked prints will be jointly inspected for accuracy and completeness by the Director of Public Works and a responsible representative of the construction contractor prior to submission of the monthly pay estimate. Failure to keep the As-Built marked prints on a current basis shall be sufficient justification to suspend progress payments. The drawings shall show the following information, if applicable, but not be limited thereto:

- a. The location of any utility lines or other installations of any kind or description known to exist within the construction area. The location includes dimensions to permanent features.
- b. The location and identification of all surface installations within 10 feet of the construction area.
- c. The location and dimensions of any changes within the building or structure.

- d. Correct grade or alignment of roads, structures, or utilities if any changes were made from contract plans.
- e. Correct elevations if changes were made in site grading.
- f. Change in details of design or additional information obtained from working drawings specified to be prepared or furnished by the Contractor including but not limited to fabrication, erection, installation plans and placing details, pipe sizes, insulation material, dimensions of equipment foundations, etc.
- g. The topography and grades of all drainage installed or affected as part of the project construction.
- h. All changes or modifications which result from the final inspection.

6.17.2 The As-Built marked prints shall be delivered to the Director of Public Works at the time of final inspection for his/her review and approval. All approval and acceptance of As-Built drawings shall be accomplished before final payment is made to the Contractor.

6.18 Cooperation and Coordination with Property Owners

The Contractor shall schedule his/her work to minimize inconvenience or disruption of residences during the course of the work. Any private property which is disturbed by the work shall be repaired to its original condition and to the satisfaction of the Director of Public Works. The cost of said repairs shall be included in the prices paid for the various items of work and no extra compensation shall be allowed.

6.19 Indemnification

6.19.1 To the extent permitted by law, Contractor shall indemnify, hold harmless, release and defend Town, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including Contractor from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of Contractor, his/her Sub-Contractor, employees and agents hereunder and regardless of Town's passive negligence. Contractor shall be solely responsible and save Town

harmless from all matters relative to payment of his/her employees including compliance with Social Security, withholding, etc.

- 6.19.2 This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Contractor under Worker's Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this agreement, or the terms, applicability or limitations of any insurance held by Contractor.

7.0 OTHER WORK

7.1 Related Work at Site

- 7.1.1 The Town may perform other work related to the Project at the Site by the Town's own forces, have other work performed by utility owners, or let other direct contracts for such other work and shall not constitute the basis for any additional claims by the Contractor. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to the Contractor prior to starting any such other work.
- 7.1.2 The Contractor shall afford each person who is performing the other work (including the Town's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the work with theirs. The Contractor shall do all cutting, fitting, and patching of the work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. The Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Director of Public Works and the others whose work will be affected.
- 7.1.3 If the proper execution or results of any part of the Contractor's work depends upon such other work by another, the Contractor shall inspect and report to the Director of Public Works in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for such proper execution and results. The Contractor's failure to report such delays, defects, or deficiencies will constitute an acceptance of the other work as fit and proper for

integration with the Contractor's work except for latent or non-apparent defects and deficiencies in the other work.

7.2 Coordination

7.2.1 The Town may enter into certain contracts with others requiring concurrent operations at the site and within the facilities occupied and under construction by the Contractor.

7.2.2 It shall be the Contractor's responsibility to schedule his/her work as to afford reasonable access and opportunity for the execution of work by others and to integrate, connect, and coordinate his/her work with that of others.

7.2.3 The Contractor shall report, in writing, to the Director of Public Works, the improper execution, or un-readiness of work by others, upon which Contractor's Work depends. The failure to ascertain and give written notice of the unsuitability thereof shall constitute acceptance of others' work except as such defects may be of a latent nature and develop after completion of the Contractor's Work.

8.0 TOWN'S RESPONSIBILITIES

8.1 Payments

The Town will make payments to the Contractor as provided in Article 14.

8.2 Reports and Drawings

The Town will identify and make available to the Contractor copies of reports of physical conditions at the Site and drawings of existing structures which have been utilized in preparing the Contract Documents as set forth in Article 4.

8.3 Change Orders

The Town will execute Change Orders as indicated in Article 10.

8.4 Inspections and Tests

The Town's responsibility for inspections and tests is set forth in Article 13.3.

8.5 Suspension of Work

The Town's right to stop work or suspend work is set forth in Articles 13.4 and 15.2.

8.6 Termination of Agreement

The Town's right to terminate services of the Contractor is set forth in Articles 15.3, 15.4 and 15.5.

8.7 Limitations on Town's Responsibilities

8.7.1 The Town shall not supervise, direct or have control or authority over, nor be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the work. Town will not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

8.8 Undisclosed Hazardous Environmental Conditions

Town's responsibility in respect to an undisclosed hazardous environmental condition is set forth in Article 4.5.

9.0 DIRECTOR OF PUBLIC WORKS STATUS DURING CONSTRUCTION

The Director of Public Works shall decide all questions which may arise as to the quality and acceptability of the final work product and shall decide all questions which may arise as to the interpretations of the plans and specifications, and all questions of the plans and specifications, and all questions as to the acceptable fulfillment of the contract on the part of the Contractor and as to compensation. His/her decision shall be final.

10.0 CHANGES IN THE WORK

10.1 General

10.1.1 The Town may at any time it deems necessary or desirable, require changes in the Work called for by the Contract Documents. Changes and other amendments to the Contract Documents may be made only by a writing executed by authorized representatives of the Town and the Contractor.

10.1.2 All proposed change orders must be submitted on completed Change Order forms provided in the Contract Documents. If

applicable, 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 also 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.

10.1.3 The Director of Public Works will notify the Contractor in writing of the details of the change. No increase in the contract price or extension of contract time will be made for a change if the Contractor does not advise the Director of Public Works in writing within five (5) days after receipt of the notification of change, that additional cost and/or time extension will be required to make the change. Contractor shall submit to the Town a detailed breakdown of the additional costs and/or time extension required to make the change within fifteen (5) days of notification of change.

10.1.4 No work shall commence on any change requested by the Director of Public Works until there is mutual agreement on cost or the method of determining cost is established in writing.

10.1.5 If notice of any change in the Work is required to be given to a surety, the giving of any such notice shall be the Contractor's responsibility. If the change in the Work affects the Contract Price, the Town may require an adjustment to the amount of any applicable bond and the amount of each applicable bond shall be adjusted accordingly.

10.1.6 Notwithstanding the foregoing, the Director of Public Works may, at any time, issue instruction to the Contractor requiring minor changes in the Work or schedule that are not inconsistent with the general intent of the Contract Documents, at no extra cost to the Town.

10.2 Quantity Variations

Work for which the Contractor has submitted unit prices in his/her bid shall be paid for at the unit price for each unit of work actually completed.

11.0 CHANGE OF CONTRACT PRICE

11.1 General

11.1.1 The Contract Price constitutes the total compensation payable to the Contractor performing the work. All duties, responsibilities, and

obligations assigned to or undertaken by the Contractor to complete the work shall be at its expense without change in the Contract Price.

11.1.2 The Contract Price may only be changed by a Change Order. The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- a. Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
- b. By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Article 11.4; or
- c. On the basis of the cost of work (determined as provided in Article 11.3) plus the Contractor's overhead and profit (determined as provided in Article 11.4).

11.1.3 Any claim for an increase in the Contract Price shall be based on written notice delivered by the Contractor to the Director of Public Works promptly (but in no event later than ten (10) days) after the start of the event giving rise to the claim and shall state the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days after the start of such event (unless the Director of Public Works allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the Contractor's written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the Contractor is entitled as a result of such event. All claims for adjustment in the Contract Price will be determined by the Director of Public Works. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Article 11.1.2.

11.2 Costs Relating to Weather

The Contractor shall have no claims against the Town for damages for any injury to work, materials, or equipment, resulting from the action of the elements. If, however, in the opinion of the Director of Public Works, the Contractor has made all reasonable efforts to protect the materials, equipment, and work, the Contractor may be granted a reasonable extension of Contract Times to make proper repairs, renewals, and

replacement of the work, materials, or equipment.

11.3 Cost of Work

11.3.1 General: The term “cost of work” means the sum of all costs necessarily incurred and paid by the Contractor for labor, materials, and equipment in the proper performance of extra work. Except as otherwise may be agreed to in writing by the Town, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Article 11.5.

11.3.2 Labor: The costs of labor will be the actual cost for wages prevailing for each craft or type of workers performing the extra work at the time the extra work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to extra work shall be paid. Nondirective labor costs including superintendence shall be considered part of the markup set out in Article 11.4.

11.3.3 Materials: The cost of materials reported shall be at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of freight, delivery and storage, subject to the following:

- a. All trade discounts and rebates shall accrue to the Town, and the Contractor shall make provisions so that they may be obtained;
- b. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the Director of Public Works. Except for actual costs incurred in the handling of such materials, markup will not be allowed;
- c. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on extra

work items or the current wholesale price for such materials delivered to the Site, whichever price is lower; and

- d. If in the opinion of the Director of Public Works the cost of material is excessive, or the Contractor does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the Site less trade discount. The Town reserves the right to furnish materials for the extra work and no claim will be allowed by the Contractor for costs and profit on such materials.
- e. Equipment: The Contractor will be paid for the use of equipment at the rental rate listed for such equipment specified. Such rental rate will be used to compute payments for equipment whether the equipment is under the Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to the Town for the total period of use. If it is deemed necessary by the Contractor to use equipment not listed in the publication specified, an equitable rental rate for the equipment will be established by the Director of Public Works. The Contractor may furnish cost data which might assist the Director of Public Works in the establishment of the rental rate. Payment for equipment shall be subject to the following:
 - f. All equipment shall, in the opinion of the Director of Public Works, be in good working condition and suitable for the purpose for which the equipment is to be used;
 - g. Before construction equipment is used on the extra work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Director of Public Works, in duplicate, a description of the equipment and its identifying number;
 - h. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer; and

- i. Individual pieces of equipment or tools having a replacement value of five hundred dollars (\$500) or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefor.

11.3.4 Equipment Rental Time: The rental time to be paid for equipment on the Site will be the time the equipment is in productive operation on the extra work being performed and, in addition, will include the time required to move the equipment to the location of the extra work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the extra work, even though located at the Site of the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the Site of the extra work on other than the extra work. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the work Site will be computed subject to the following:

- a. When hourly rates are listed, any part of an hour less than thirty (30) minutes of operation will be considered to be half-hour of operation, and any part of an hour in excess of thirty (30) minutes will be considered one hour of operation;
- b. When daily rates are listed, any part of a day less than four hours operation will be considered to be half-day of operation. When owner-operated equipment is used to perform extra work to be paid for on a time and materials basis, the Contractor will be paid for the equipment and operator, as set forth in Articles 3, 4, and 5, following;
- c. Payment for the equipment will be made in accordance with the provisions in Article 11.3.4, herein;
- d. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the Site, or in the absence of such labor, established by collective bargaining agreements for the type of workmen and location of the extra work, whether or not the operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein accordance with

the provisions of Article 11.3.2, herein, which surcharge shall constitute full compensation for payments imposed by state and federal laws and all other payments made to or on behalf of workers other than actual wages; and

- e. To the direct cost of equipment rental and labor, computed as provided herein, will be added the allowances for equipment rental and labor as provided in Article 11.3, herein.

11.3.5 Special Services: Special work or services are defined as that work characterized by extraordinary complexity, sophistication, innovation, or a combination of the foregoing attributes which are unique to the construction industry. The Director of Public Works will make estimates for payment for special services and may consider the following:

- a. When the Director of Public Works and the Contractor, determine that a special service or work is required which cannot be performed by the forces of the Contractor or those of any of its Subcontractors, the special service or work may be performed by an entity especially skilled in the work to be performed. After validation of invoices and determination of market values by the Director of Public Works, invoices for special services or work based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs;
- b. When the Contractor is required to perform work necessitating special fabrication or matching process in a fabrication or a machine shop facility away from the Site, the charges for that portion of the work performed at the off-site facility may, by agreement, be accepted as a special service and accordingly, the invoices for the work may be accepted without detailed itemization; and
- c. All invoices for special services will be adjusted by deducting all trade discounts. In lieu of the allowances for overhead and profit specified in Article 11.4, herein, an allowance of fifteen percent (15%) will be added to invoices for special services.

11.3.6 Sureties. All work performed hereunder shall be subject to all provisions of the Contract Documents and the Contractor's sureties shall be bound with reference thereto as under the original Agreement. Copies of all amendments to Bonds or supplemental

Bonds shall be submitted to the Town for review prior to the performance of any work hereunder.

- 11.3.7 When payment is made on a force account basis the amount shall be determined in accordance with Sections 9-1.03 through 9-1.03D of the State Specifications, except that actual payroll taxes and required contributions will be used in lieu of the labor surcharge specified in the Section 9-103A (1b).

11.4 Contractor's Overhead and Profit

- 11.4.1 Extra work ordered on the basis of time and materials will be paid for at the actual necessary cost as determined by the Director of Public Works, plus allowances for overhead and profit. The allowance for overhead and profit will include full compensation for superintendence, taxes, field office expense, extended overhead, home office overhead, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for under Article 11.3. The allowance for overhead and profit will be made in accordance with the following schedule:

Overhead and Profit Allowance

Labor:	20 percent
Materials:	15 percent
Equipment:	15 percent

To the sum of the costs and markups provided for in this Article, an additional two (2%) percent of the sum will be added as compensation for Bonds and insurance.

- 11.4.2 It is understood that labor, materials, and equipment for extra work may be furnished by the Contractor or by the Subcontractor on behalf of the Contractor. When all or any part of the extra work is performed by a Subcontractor, the allowance specified herein will be applied to the labor, materials, and equipment costs of the Subcontractor, to which the Contractor may add five (5%) percent of the Subcontractor's total cost for the extra work. Regardless of the number of hierarchical tiers of Subcontractors, the five (5%) percent increase above the Subcontractor's total cost which includes the allowances for overhead and profit specified herein may be applied one time only.

11.5 Excluded Costs

11.5.1 The term “cost of the work” shall not include any of the following:

- a. Payroll costs and other compensation of Contractor’s officers, executives, proprietors, partners, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor’s principal or a branch office for general administration of the work all of which are to be considered administrative costs covered by the Contractor’s allowance for overhead and profit;
- b. Expenses of Contractor’s principal and branch offices other than Contractor’s office at the Site;
- c. Any part of Contractor’s capital expenses, including interest on Contractor’s capital employed for the work and charges against Contractor for delinquent payments;
- d. Cost of premiums for all Bonds and for all insurance whether or no Contractor is required by the Contract Documents to purchase and maintain the same (except as provided by Article 11.4 above);
- e. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damages to property; and
- f. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in Article 11.4.

11.6 Contractor’s Extra Work Report

In order to be paid for extra work, the Contractor must submit a daily extra work report on the form approved by the Director of Public Works. The form must be completely filled out based on the provisions of Articles 11.3 through 11.5 and signed by the Contractor and Director of Public Works at

the end of each work day. Failure to complete the form and obtain appropriate signatures by the next working day after the extra work of the previous day was completed will result in Contractor's costs for extra work being disallowed.

12.0 CHANGE OF CONTRACT TIMES

12.1 General

12.1.1 The Contract Times may only be changed by a Change Order. Any claim for an extension of the Contract Times shall be based on written notice delivered by the Contractor to the Director of Public Works promptly (but in no event later than ten (10) days) after the start of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after the start of such event (unless the Director of Public Works allows an additional period of time for the submission of additional or more accurate data in support of the claim) and shall be accompanied by the Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor is entitled as a result of said event. All claims for adjustment in the Contract Times will be determined by the Director of Public Works. No claim for an adjustment in the Contract Times will be valid if not submitted in accordance with the requirements of this Article 12.1(A). An increase in Contract Times does not mean that the Contractor is due an increase in Contract Price. Only compensable time extensions will result in an increase in Contract Price.

12.1.2 All time limits stated in the Contract Documents are of the essence of the Agreement.

12.1.3 When Contractor is prevented from completing any part of the work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, the Contract Times (or Milestones) will be extended in an amount equal to the time lost on the critical path of the work due to such delay, if a claim is made therefore as provided in Article 12. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Town; acts or neglect of those performing other work as contemplated by Article 7; and fires, floods, epidemics, abnormal weather conditions, or acts of God. Delays attributable to and within the control of any Subcontractor or Supplier shall be deemed to be delays within the control of the Contractor.

12.1.4 In no event will Town be liable to Contractor, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for any increase in the Contract Price or other damages arising out of or resulting from the following:

- a. Delays caused by or within the control of Contractor; or
- b. Delays beyond the control of both Town and Contractor including, but not limited to, fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by those performing other work as contemplated by Article 7.

12.2 Extensions of Contract Times for Delay due to Weather

12.2.1 The Contractor's construction schedule shall anticipate delay due to unusually severe weather.

12.2.2 Contract Times may be extended by the Director of Public Works because of delays in excess of the anticipated delay. The Contractor shall, within ten (10) days of the beginning of any such delay, notify the Director of Public Works in writing and request an extension of Contract Times. The Director of Public Works will ascertain the facts and the extent of the delay and extend the Contract Times when, in its judgment, the findings of the fact justify such an extension.

13.0 INSPECTIONS AND TESTS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

13.1 Notice of Defective Work

Prompt notice of Defective Work known to the Director of Public Works will be given to the Contractor. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13. Defective Work may be rejected even if approved by prior inspection.

13.2 Access to Work

Director of Public Works and other representatives and personnel of Town, independent testing laboratories, and governmental agencies with jurisdictional interests shall have access to the work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.3 Inspections and Tests

The Town reserves the right to conduct such inspection and by such inspectors as it sees fit and hereby requires that such inspectors shall have the right to inspect all Work as it progresses and shall have access to all data relevant to the performance of this Contract. The Contractor shall provide proper facilities for such access and inspection. If the specifications, laws, ordinances, or any public authority require any work to be specifically done, tested, or approved, the Contractor shall give the Town's Director of Public Works timely notice of its readiness for inspection. If any work shall be accomplished without approval or consent, it must, if required by the Director of Public Works, be exposed for examination at the Contractor's expense.

13.4 Town May Stop the Work

If Defective Work is identified, the Director of Public Works may order the Contractor to stop performance of the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Director of Public Works to stop the work shall not give rise to any duty on the part of the Director of Public Works to exercise this right for the benefit of the Contractor or any other party.

13.5 Correction or Removal of Defective Work

If required by the Director of Public Works, the Contractor shall promptly either correct all Defective Work, whether or not fabricated, installed, or completed, or, if the work has been rejected by the Director of Public Works, remove it from the Site and replace it with non-defective Work. The Contractor shall bear all direct, indirect, and consequential costs and damages of such correction or removal, including but not limited to, fees and charges of Director of Public Works, architects, attorneys, and other professionals made necessary thereby.

13.6 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of Defective Work, the Town prefers to accept the Defective Work, the Town may do so. The Contractor shall bear all direct, indirect, and consequential costs attributable to the Town's evaluation of and determination to accept such Defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the Town shall be entitled to an appropriate decrease in the Contract Price.

13.7 Town may Correct Defective Work

13.7.1 If the Contractor fails within a reasonable time after written notice from the Director of Public Works to correct Defective Work, or to remove and replace Defective Work as required by the Director of Public Works in accordance with Article 13.5(A), or if the Contractor fails to perform the Work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, the Town may, after seven (7) days written notice to the Contractor, correct and remedy any such deficiency.

13.7.2 In exercising the rights and remedies under this article, the Town shall proceed with corrective and remedial action. In connection with such corrective and remedial action, the Town may exclude the Contractor from all or part of the Site, take possession of all or part of the Work, and suspend the Contractor's services related thereto and incorporate in the Work all materials and equipment for which the Town has paid the Contractor whether stored at the Site or elsewhere. The Contractor shall provide the Town and its Director of Public Works, access to the Site to enable Town to exercise the rights and remedies under this Article.

13.7.3 All direct, indirect, and consequential cost and damages incurred by the Town in exercising the rights and remedies under this Article will be charged against the Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, the Town may make a claim therefore as provided in Article 17.20. Such claim will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's Defective Work and all direct, indirect, and consequential damages associated therewith.

13.7.4 The Contractor shall not be allowed an extension of Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Town of Town's rights and remedies under this Article.

13.8 Correction Period

13.8.1 The correction period for Defective Work shall be the longer of:

- a. One (1) year after the date of final acceptance;
- b. Such time as may be prescribed by Laws and Regulations;
- c. Such time as specified by the terms of any applicable special guarantee required by the Contract Documents; or
- d. Such time as specified by any specific provision of the Contract Documents.

13.8.2 If, during the correction period as defined in Article 13.8.1 above, any work is found to be Defective Work, the Town shall have the same remedies as set forth in Articles 13.5, 13.6, and 3.7 above.

13.8.3 Where Defective Work (and damage to other work resulting there from) has been corrected, removed, or replaced under this Article, the correction period hereunder with respect to such work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

14.0 PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Schedule of Values (Lump Sum Price Breakdown)

The schedule of values or lump sum price breakdown established as provided in the Bidder's Proposal shall serve as the basis for progress payments and shall be incorporated into a form of "Application for Payment" acceptable to the Director of Public Works.

14.2 Unit Price Bid Schedule

Progress payments on account of unit price work will be based on the number of units completed.

14.3 Application for Process Payment

14.3.1 Unless otherwise prescribed by law, on the twenty-fifth (25th) of each month, the Contractor shall submit to the Director of Public Works for review, the Application for Payment filled out and signed by the Contractor covering the Work completed as of the Application for

Payment and accompanied by such supporting documentation as is required by the Contract Documents.

14.3.2 The Application for Payment shall identify, as a subtotal, the amount of the Contractor total earnings to date.

14.3.3 The net payment due the Contractor shall be the above-mentioned subtotal from which shall be deducted the amount of 10% retainage and the total amount of all previous payments made to the Contractor.

14.4 Contractor's Warranty of Title

The Contractor warrants and guarantees that title to all Work, materials, and equipment covered by an Application for Payment, whether incorporated in the Work or not, will pass to the Town no later than the time of payment, free and clear of all Liens.

14.5 Review of Applications for Progress Payment

14.5.1 The Director of Public Works will, within fourteen (14) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the application to the Town, or return the application to the Contractor indicating in writing the Director of Public Works' Reasons for Refusing to Recommend Payment. In the latter case, the Contractor may make the necessary corrections and resubmit the application. If the Director of Public Works still disagrees with a portion of the application, she/he will submit the application recommending the undisputed portion of the application to the Town for payment and provide reasons for recommending non-payment of the disputed amount. Thirty days (30) after presentation of the Application for Payment with the Director of Public Works' recommendation, the amount recommended will (subject to the provisions of Article 14.5) become due and when due will be paid by the Town to the Contractor.

14.5.2 The Director of Public Works, in its discretion, may refuse to recommend the whole or any part of any payment. Director of Public Works may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Director of Public Works' opinion to protect OWNER from loss because:

- a. The work is Defective Work or the completed Work has been damaged requiring correction or replacement.
- b. The Contract Price has been reduced by written amendment or Change Order.
- c. The Town has been required to correct Defective Work or complete Work in accordance with Article 13.7.
- d. Director of Public Works has actual knowledge of the occurrence of any of the events enumerated in Article 15.2 through 15.5 inclusive.

14.5.3 The Town may refuse to make payment of the full amount recommended by the Director of Public Works because:

- a. Claims have been made against the Town on account of Contractor's performance or furnishing of the Work.
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Town to secure the satisfaction and discharge of such Liens.
- c. There are other items entitling Town to set-off against the amount recommended, or
- d. Town has actual knowledge of the occurrence of any of the events enumerated in 15.2 through 15.5 inclusive.

The Town must give the Contractor immediate written notice stating the reasons for such action and promptly pay the Contractor the amount so withheld, or any adjustment thereto agreed to by Town and Contractor, when Contractor corrects to Town's satisfaction the reasons for such action.

14.6 Substantial Completion

When the Contractor considers the Work ready for its intended use, the Contractor shall notify the Director of Public Works in writing that the Work is substantially complete. The Contractor shall attach to this request a list of all work items that remain to be completed and a request that the Director of Public Works prepare a Notice of Completion. Within a reasonable time thereafter, the Contractor, and the Director of Public Works shall make an inspection of the Work to determine the status of completion. If the Director

of Public Works considers the Work substantially complete, the Director of Public Works will prepare and execute and deliver for Town Council approval and recordation the Notice of Completion signed by the Director of Public Works and Contractor, which shall fix the date of Substantial Completion.

14.7 Partial Utilization

14.7.1 The Town shall have the right to take possession of, utilize or place into service any item of equipment or other usable portion of the Work prior to completion of the Work. Such possession or use shall not be deemed an acceptance of Work under this Contract. Whenever the Town plans to exercise said right, the Contractor will be notified in writing by the Director of public works, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service.

14.7.2 Prior to such use, the Town shall furnish the Contractor an itemized list of Work remaining to be performed or corrected on such portions of the project as are to be possessed or used by the Owner, provided that failure to list any item of work shall not relieve the Contractor of responsibility for compliance with this Contract.

14.7.3 It shall be understood by the Contractor that until such written notification is issued, all responsibility for care and maintenance of all of the Work shall be borne by the Contractor. Upon issuance of said written notice of Partial Utilization, the Town will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.

14.7.4 The Contractor shall retain full responsibility for satisfactory completion of the Work, regardless of whether a portion thereof has been partially utilized by the Town of Substantial Completion for the Work. If such use or possession delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or time of completion will be made.

14.8 Final Application for Payment

After the Contractor has completed all of the remaining work items referred to in Article 14.6 and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in the General Requirements), and other documents, all as required by the Contract Documents, and after the

Director of Public Works has indicated that the Work is acceptable, the Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to the OWNER) of all Liens arising out of or filed in connection with the Work.

14.9 Final Payment and Acceptance

14.9.1 Final payment will not be made to the Contractor until she/he has furnished evidence satisfactory to the Town of the Contractor's payment or provision for payment of all bills for material, labor, services, etc. incurred in connection with the performance of the Work; and the written consent of the Contractor's surety to release final payment.

14.9.2 Final payment will further be contingent on approval of, and acknowledgement by the Town that the Contractor has completed all tasks and complied with all conditions of the Contract Documents. Upon approval by the Owner, the final payment will be made to the Contractor.

14.10 Liquidated Damages

14.10.1 It is agreed that Contractor's failure to fully perform the Work by the Time for Completion (as modified by approved extensions) will result in damages being sustained by the Town. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each calendar day in excess of the Time for Completion, the Contractor shall pay to the Town, or have monies withheld from monies to it, liquidated damages of \$100.00 per calendar day in accordance with California Government Code Section 53069.85.

14.11 Release of Retainage and Other Deductions

14.11.1 After executing the necessary documents to initiate the Lien period, and not more than forty-five (45) days thereafter (based on a thirty (30)-day Lien filing period and fifteen (15)-day processing time), the Town will release to the Contractor the retainage funds withheld pursuant to the Agreement, less any deductions to cover pending claims against the Town pursuant to Article 17.22.

14.11.2 After filing of the necessary documents to initiate the Lien period, the Contractor shall have thirty (30) days to complete any outstanding items of correction work remaining to be completed or corrected as listed on a final punch list made a part of the Notice of Completion. Upon expiration of the forty-five (45) days, referred to in Article 14.11(A), the retainage amounts withheld for all remaining work items will be returned to the Contractor; provided that said work has been completed or corrected to the satisfaction of the Director of Public Works within said thirty (30) days. Otherwise, the Contractor does hereby waive any and all claims for all monies withheld by the Town under this Agreement to cover two times the value of such remaining uncompleted or uncorrected items.

15.0 SUSPENSION OF WORK AND TERMINATION

15.1 Demand for Assurance

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a repudiation of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

15.2 Suspension of Work by Town

The Town may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the Contractor. The Contractor shall resume the Work on receipt of a notice of resumption of work. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both directly attributable to any suspension if the Contractor makes an approval claim therefore as provided in Articles 17.20.

15.3 Termination of Agreement by Town for Default

15.3.1 In the event of default by the Contractor, the Director of Public Works may give seven days written notice to the Contractor of Town's intent to terminate the Agreement and provide the Contractor an opportunity to remedy the conditions constituting the default within a specified period of time. It will be considered a default by the Contractor whenever Contractor shall:

- a. Declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors;
- b. Disregard or violate the Laws or Regulations of any public body having jurisdiction;
- c. Fail to provide materials or workmanship meeting the

requirements of the Contract Documents;

- d. Disregard or violate provisions of the Contract Documents or Director of Public Works' instructions;
- e. Fail to execute the Work according to the approval progress schedule;
- f. Fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract Documents; or
- g. Disregard the authority of the Director of Public Works.

15.3.2 If the Contractor fails to remedy the conditions constituting default within the time allowed, the Director of Public Works may then issue the notice of termination.

15.3.3 In the event the Agreement is terminated in accordance with Article 15.2, herein, the Town may take possession of the Work and may complete the Work by whatever method or means the Town may select. The cost of completing the Work will be deducted from the balance which would have been due the Contractor had the Agreement not been terminated and the Work completed in accordance with the Contract Documents. If such cost exceeds the balance which would have been due, the Contractor shall pay the excess amount to the Town. If such cost is less than the balance which would have been due, the Contractor shall not have claim to the difference.

15.4 Termination of Agreement by Town Without Cause

15.4.1 Upon seven days' written notice to the Contractor, the Town may, without cause and without prejudice to any other right or remedy of the Town, elect to terminate the Agreement. In such case, the Contractor shall be paid (without duplication of any items):

- a. For completed and acceptable Work executed in accordance with the Contract Documents, prior to the effective date of termination, including fair and reasonable sums for overhead and profit of such Work;
- b. For expenses sustained prior to the effective date of termination in performing services and furnishing labor,

materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums or overhead and profit on such expenses;

- c. For all reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with Subcontractors, others;
- d. For reasonable expenses directly attributable to termination; and
- e. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.5 Termination of Agreement by Town for Convenience

15.5.1 This agreement may be terminated for environmental considerations at the discretion of the Town. Notice of termination of this Agreement shall be given in writing to Contractor, and shall be sufficient and complete when same is deposited in the United States mail postage prepaid and certified, addressed as set forth in the Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by Contractor.

15.5.2 If Town should terminate this Agreement, the Contractor shall be compensated for all work satisfactorily performed prior to time of receipt of cancellation notice, and shall be compensated for materials ordered by the Contractor or his/her employees, or services of others ordered by the Contractor or his/her employees prior to receipt of notice of cancellation whether or not such materials or final instruments of services of others have actually been delivered, provided that the Contractor or employees are not able to cancel such orders for materials or services of others. Compensation for the Contractor in the event of cancellation shall be determined by the Director of Public Works in accordance with the percentage of project completed and agreed to by the Contractor.

15.5.3 In the event of cancellation, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of the Town's last payment shall be relinquished to the Town. The Town may, at its own expense, make copies or extract information from any such notes, sketches,

computations, drawings, and specifications, or other data whether complete or not.

15.6 Termination of Agreement by Contractor

15.6.1 The Contractor may terminate the Agreement upon fourteen (14) days written notice to the Director of Public Works whenever:

- a. The Work has been suspended under the provisions of Article 15.2, herein, for more than ninety (90) consecutive days through no fault or negligence of the Contractor, and notice to resume work or to terminate the Agreement has not been received from the Director of Public Works within this time period; or
- b. The Town should fail to pay the Contractor any monies due him in accordance with the terms of the Contract Documents and within sixty (60) days after presentation to the Director of Public Works by the Contractor of a request therefore, unless within said fourteen (14) day period the Town shall have remedied the condition upon which the payment delay was based.

15.6.2 In the event of such termination, the Contractor shall have no claims against the Town except for those claims specifically enumerated in Article 15.4, herein, and as determined in accordance with the requirements of said article.

16.0 OBLIGATIONS AND WAIVERS

16.1 Title to Materials found on the Work

The Town reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the Work. Unless otherwise specified in the Contract Documents, neither the Contractor nor any Subcontractor shall have any right, title, or interest in or to any such materials. The Contractor will be permitted to use in the Work, without charge, any such materials which meet the requirements of the Contract Documents.

16.2 Right to Audit

If the Contractor submits a claim to the Director of Public Works for additional compensation, the Town shall have the right, as a condition to

considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the Contractor's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discovery and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the Contractor's plant or such parts thereof, as may be or have been engaged in the performance of the Work. The Contractor further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the Town desires during the Contractor's normal business hours at the office of the Contractor. The Contractor shall make available to the Director of Public Works for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the Director of Public Works.

16.3 Survival of Obligations

All representations, indemnifications, warranties, and guaranties made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work or termination or completion of the Agreement.

16.4 Governing Law; Venue

The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine. Venue shall be in the County of Marin.

16.5 Severability

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

16.6 Waiver

The waiver by the Town of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not

be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the Town which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by Contractor or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

17.0 LAWS, ORDINANCES, AND REGULATIONS

17.1 State Wage Determination

In accordance with California Labor Code Section 1771, Contractor will pay and will require all Subcontractors to pay all workers on the work a salary or wage at least equal to the prevailing rate of per diem wages for such work as set forth in the wage determinations and wage standards applicable to this work, a copy of which is on file with the Town Clerk. A copy of the prevailing wage rate of per diem wage shall be posted at the job site. In accordance with California Labor Code Section 1775, Contractor shall forfeit to the Town, as a penalty, Twenty-Five Dollars (\$25.00) for each calendar day or portion thereof for each worker paid (either by Contractor or Subcontractors) less than the prevailing rate wage rate. The Work covered by this Agreement is a "public work" as that term is defined in California Labor Code, Division 2, Part 7, Chapter 1.

17.2 Worker's Compensation

17.2.1 In accordance with the provisions of Section 3700 of the California Labor Code, the Contractor shall secure the payment of compensation to its employees.

17.2.2 Prior to beginning work under the Contract, the Contractor shall sign and file with the Director of Public Works the following certification:

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

17.2.3 Notwithstanding the foregoing provisions, before the Contract is executed on behalf of the Town, a bidder to whom a contract has been awarded shall furnish satisfactory evidence that it has secured

in the manner required and provided by law the payment of workers' compensation insurance.

17.3 Apprentices on Public Works

Contractor shall comply with applicable provisions of Labor Code Section 1777.5 for all apprenticeable occupations. In the event Contractor willfully fails to comply with the applicable provisions of 1777.5, Contractor shall forfeit as a civil penalty the sum of FIFTY DOLLARS (\$50.00) for each calendar day of non-compliance, which money may be withheld by Town pursuant to the provisions of Labor Code Section 1777.7.

17.4 Working Hours

17.4.1 The Contractor shall schedule work to occur only from 8 a.m. to 5 p.m. on Monday to Friday. Deviations from this restriction, including night and weekend work shall be approved by the Public Works Director.

17.4.2 Contractor agrees that in the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the Contractor shall not require more than eight (8) hours of labor in a day from any person employed by Contractor hereunder, except as provided in the Labor Code of the State of California. Contractor shall conform to Article 3, Chapter 1, Part 7 (Section 1810, et seq.) of the Labor Code of the State of California, and it is agreed that the Contractor shall forfeit to the Town as a penalty the sum of TWENTY-FIVE DOLLARS (\$25.00) for each worker employed in the execution of this Contract by the Contractor or any Sub-contractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in violation of said Article.

17.5 Contractor Not Responsible for Damage Resulting from Certain Acts of God

As provided in Section 7105 of the California Public Contract Code, the Contractor shall not be responsible for the cost of repairing or restoring damage to the Work which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the Work damaged was built in accordance with accepted and applicable building standards and the plans and specifications of the Town. The Contractor shall obtain insurance to indemnify the Town for any damage to the Work caused by an act of God if the insurance premium is a separate bid item in the bidding schedule for the Work. For purposes of this Article, the term "acts of God" shall include only the following occurrences

or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter scale and tidal waves.

17.6 Notice of Completion

In accordance with the Sections 3086 and 3093 of the California Civil Code, within ten (10) days after date of acceptance of the Work by the Town Director of Public Works will file, in the County Recorder's office, a Notice of Completion of the work.

17.7 Unpaid Claims

If, at any time prior to the expiration of the period for service of a stop notice, there is served upon the Town a stop notice as provided in Sections 3179 and 3210 of the California Civil Code, the Town shall, until the discharge thereof, withhold from the monies under its control so much of said monies due or to become due to the Contractor under this Contract as shall be sufficient to answer the claim stated in such stop notice and to provide for the reasonable cost of any litigation thereunder; provided, that if the Director of Public Works shall, in its discretion, permit Contractor to file with the Director of Public Works the bond referred to in Section 3196 of the Civil Code of the State of California, said monies shall not thereafter be withheld on account of such stop notice.

17.8 Concrete Forms, Falsework, and Shoring

The Contractor shall comply fully with the requirements of Section 1717 of the Construction Safety Orders, State of California, Department of Industrial Relations, regarding the design of concrete forms, falsework and shoring, and the inspection of same prior to placement of concrete. Where the said Section 1717 requires the services of a civil engineer registered in the State of California to approve design calculations and working drawings of the falsework or shoring system, or to inspect such system prior to placement of concrete, the Contractor shall employ a registered civil engineer for these purposes, and all costs therefore shall be included in the price named in the Contract for completion of the Work as set forth in the Contract Documents.

17.9 Retainage from Monthly Payment

17.9.1 The Town will pay the Contractor progress payments and the final payment, withholding ten percent (10%) retention from each payment until after the lien period is over, and less any penalties and charges and in accordance with the method set forth in the

Specifications with warrants drawn on the appropriate fund or funds as required, according to the prices as bid and accepted, based upon the Plans and Addenda, as follows:

- a. In accordance with California Public Contracts Code 22300, Contractor shall be permitted to substitute securities for any moneys to be withheld by the Town to ensure performance under this Agreement. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Town, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of this Agreement and the passage of any requisite lien period without the filing of stop notices or suit, the securities shall be returned to the Contractor. Securities eligible for investment under this Article shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Town. The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.
- b. The Town shall pay the Contractor the final payment plus any withheld retentions after the requisite lien period has passed provided: (1) no stop notices have been filed; (2) the Contractor is not in default hereunder; and (3) the work has been satisfactorily completed.

17.10 Public Works Contracts Assignment to Awarding Body

In accordance with Section 7103.5 of the California Public Contract Code, the Contractor and Subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the Town all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the

time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

17.11 Payroll Records; Retention; Inspection; Noncompliance Penalties; Rules and Regulations

17.11.1 In accordance with Section 1776 of the California Labor Code the Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- a. The information contained in the payroll record is true and correct.
- b. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his/her employees on the public works project.

17.11.2 The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his/her authorized representative on request.
- b. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- c. A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided the requesting party shall, prior to being

provided the records, reimburse the costs of preparation by the Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.

17.11.3 The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

17.11.4 Any copy of records made available for inspection as copies and furnished upon request to the public or any public Town by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.

17.11.5 The Contractor shall inform the Director of Public Works of the location of the records including the street address, Town and County, and shall, within five (5) working days, provide a notice of change of location and address.

17.11.6 The Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. In the event that the Contractor fails to comply within the ten (10) day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this Article due to the failure of a subcontractor to comply with this Article.

17.12 Audit and Record Examination

In accordance with Government Code Section 8546.7, any records or documents Contractor maintains in relation this project shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon written or oral request of the Town. If the amount of public funds exceeds Ten Thousand Dollars (\$10,000) the Agreement shall

be subject to the examination and audit of the State Auditor, at the request of the Town or as party of any audit of the Town for a period of three (3) years after final payment under the Agreement.

17.13 Removal, Relocation, or Protection of Existing Utilities

17.13.1 In accordance with the provisions of California Government Code Section 4215, any contract to which a public Town as defined in Section 4401 is a party, the public Town shall assume the responsibility, between the parties to the contract, for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the site of any construction project that is a subject of the contract, if such utilities are not identified by the public Town in the plans and specifications made a part of the invitation for bids. The Town will compensate Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the project necessarily idled during such work.

17.13.2 The Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of the public Town or the owner of the utility to provide for removal or relocation of such utility facilities.

17.13.3 Nothing herein shall be deemed to require the public Town to indicate the presence of existing service laterals or appurtenances when the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of construction; provided however, nothing herein shall relieve the public Town from identifying main or trunk lines in the plans and specifications.

17.13.4 If the Contractor while performing the Contract discovers utility facilities not identified by the public Town in the Contract Documents it shall immediately notify the public Town and utility in writing.

17.13.5 The public utility, where they are the owner, shall have the sole discretion to perform such repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

17.14 Contractor License Requirements

17.14.1 In accordance with California Business and Professions Code Section 7028.15:

- a. It is a misdemeanor for any person to submit a bid to a public Town in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:
 - i. The person is particularly exempted from this chapter.
 - ii. The bid is submitted on a state project governed by Section 10164 of the Public Contract Code or any local Town project governed by Section 20103.5 of the Public Contract Code.

17.14.2 If a person has previously been convicted of the offense described in this Article, the court shall impose a fine of twenty (20) percent of the price of the contract under which the unlicensed person performed contract work, or four thousand five hundred dollars (\$4,500), whichever is greater, or imprisonment in the county jail for not less than ten (10) days nor more than six (6) months, or both.

17.14.3 In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purpose of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

17.14.4 This Article shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this Article with respect to his/her individual licensure.

17.14.5 This Article shall not affect the right or ability of a licensed architect, land surveyor, or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.

17.14.6 Unless one of the foregoing exceptions applies, a bid submitted to a public Town by a contractor who is not licensed in accordance with this chapter shall be considered non-responsive and shall be

rejected by the public Town. Unless one of the foregoing exceptions applies, a local public Town shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. Notwithstanding any other provision of law, unless one of the foregoing exceptions applies, the registrar may issue a citation to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. The amount of civil penalties, appeal, and finality of such citations shall be subject to Sections 7028.7 and 7028.13 inclusive. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed pursuant to this chapter is void.

- 17.14.8 A public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing Town made an inquiry to the board for the purposes of verifying the license status of any person or contractor and the board failed to respond to the inquiry within three (3) business days. For the purposes of this Article, a telephone response by the board shall be deemed sufficient.

17.15 Fair Employment and Non-Discrimination

Contractor shall comply with all applicable laws, rules and regulations barring discrimination on the basis of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex.

17.16 Diggings, Trenches, or Excavations

- 17.16.1 As required by California Labor Code Section 6705, whenever work under the Contract involves the excavation of any trench or trenches five (5) feet or more in depth:

- a. The Contract shall submit for acceptance by the Director of Public Works, to whom authority has been delegated, 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. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Occupational Safety and Health, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor, an all

costs shall be included in the price named in the Contract for the completion of the Work as set forth in the Contract Documents.

- b. Nothing in this Article shall be deemed to allow the use of shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Article shall be construed to impose tort liability on the Town or any of its officers, agents, representatives or employees.
- c. Excavation shall not start until the Contractor has obtained a permit from the California Division of Industrial Safety and has posted it at the site.

17.16.2 In accordance with Public Contract Code Section 7104, whenever work under the Contract involves digging trenches or other excavations that extend deeper than four (4) feet:

- a. The contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing of any:
 - i. Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law. 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. 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.
 - ii. The Town shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a Change Order under the procedures described in the Contract.

- iii. In the event a dispute arises between the Town and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

17.17 Retention Proceeds; Withholding; disbursement

17.17.1 In accordance with Section 7107 of the Public Contract Code with respect to all contracts entered into on or after January 1, 1993 relating to the construction of any public work of improvement the following shall apply:

- a. The retention proceeds withheld from any payment by the Town from the original Contractor, or by the original Contractor from any subcontractor, shall be subject to this Article 17.17.
- b. Within sixty (60) days after the date of completion of the Work, the retention withheld by the Town shall be released. In the event of a dispute between the Director of Public Works and the original Contractor, the Town may withhold from the final payment an amount not to exceed one hundred and fifty (150) percent of the disputed amount. For the purposes of this Article, "completion" means any of the following:
 - i. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the Town, accompanied by cessation of labor on the work of improvement.
 - ii. The acceptance by the Town Council of the work of improvement.
 - iii. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of one hundred (100) days or more,

due to factors beyond the control of the Contractor.

- iv. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of thirty (30) days or more, if the Director of Public Works files for record a notice of cessation or a notice of completion.

17.17.2 Subject to Sub Article 17.17(b), within ten (10) days from the time that all or any portion of the retention proceeds are received by the original Contractor, the original Contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original Contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

17.17.3 The original Contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original Contractor. The amount withheld from the retention payment shall not exceed one hundred and fifty (150) percent of the estimated value of the disputed amount.

17.17.4 In the event that retention payments are not made within the time periods required by this Article 17.17, the Town or original Contractor shall be subject to a charge of two (2) percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

17.17.5 Any attempted waiver of the provisions of this Article shall be void as against the public policy of this state.

17.18 Timely Progress Payments; Interest; Payment Requests

17.18.1 If the Town fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted payment request from the Contractor, the Town shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

17.18.2 Upon receipt of a payment request, the Director of Public Works shall act in accordance with both of the following:

- a. Each payment request shall be reviewed by the Director of Public Works as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- b. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this Article shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

17.18.3 For purposes of this Article:

- a. A “progress payment” includes all payments due the Contractor, except that portion of the final payment designated by the contract as retention earnings.
- b. A payment request shall be considered properly executed if funds are available for payment of the payment request, and payments is not delayed due to an audit inquiry by the financial officer of the Town.

17.19 Reference for Material

In accordance with Section 3400 of the California Public Contract Code, the Contractor will be provided a period prior to award of the contract for submission of data substantiating a request for a substitution of “as equal” item.

17.20 Resolution of Construction Claims

17.20.1 In accordance with Section 20104 *et seq.* of the California Public Contract Code. This Article applies to all claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between the Contractor and the Town under this Contract for:

- a. A time extension;
- b. Payment of money or damages arising from work done by or on behalf of the Contractor pursuant to this CONTRACT and

payment of which is not otherwise expressly provided for as the Contractor is not otherwise entitled; or

- c. An amount the payment of which is disputed by the Director of Public Works.

17.20.2 For any claim set out in Articles 17.20.1(a), 17.20.1(b) or 17.20.1(c) above, the following requirements apply:

- a. The claim shall be in writing, include the documents necessary to substantiate the claim and be accompanied by the following certification:

“CONTRACT PROVISION REQUIRING PERSONAL CERTIFICATION OF ALL CLAIMS:

I, _____, BEING THE _____

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

- b. Claims must be filed on or before the date of final payment. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by Contract for the filing of claims.
- c. The claim must include actual cost documentation, including hours of work performed, equipment operation costs, and labor and overhead costs, which should be established at a standard percentage. Any overhead costs listed when paid, shall provide full and complete payment for any and all overhead, including jobsite overhead, home office overhead, as well as additional costs arising from disruption, re-

sequencing or acceleration. Contractor shall provide prompt notification of any disagreement in quantities of work performed along with a detailed accounting by means of a schedule update demonstrating any delays incurred.

17.20.3 For claims of less than fifty thousand dollars (\$50,000), the Director of Public Works shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the Town may have against the Contractor.

- a. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Director of Public Works and the Contractor.

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

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

- a. If additional information is therefore required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Director of Public Works and the Contractor.
- b. The Director of Public Work's written response to the claim, as further documented, shall be submitted to Contractor within thirty (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.

- c. If the Contractor disputes the Director of Public Work's written response, or the Director of Public Works fails to respond within the time prescribed, the Contractor may notify the Director of Public Works, in writing, either within fifteen (15) days of receipt of the Director of Public Work's response or within fifteen (15) days of the Director of Public Work'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 Director of Public Works shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- d. If, following the meet and confer conference the claim or any portion remains in dispute, the Contractor may file a claim pursuant to 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 Contractor submits its written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

17.20.5 The following procedures are established for all civil actions filed to resolve claims subject to this article:

- a. Responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court
- b. 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.

- c. In addition to Chapter 2.5 (commencing with Section 1141.10 of Title 3 of Part 3 of the Code of Civil Procedure (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- d. The Town shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in this Contract.
- e. In any suit filed under Section 20104.4 of the California Public Contract Code, the Town shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

SECTION IV - SPECIAL PROVISIONS

TOWN OF ROSS

**MORRISON RD PAVEMENT REHABILITATION
TOWN PROJECT NO. 9040-45-MOR**

401. GENERAL DESCRIPTION OF WORK

The work shall consist of:

The work to be performed under this contract for the MORRISON RD PAVEMENT REHABILITATION, in the Town of Ross consists of, but is not limited to: roadway grinding and overlay; roadway signage and striping; traffic control, water pollution control, and ancillary work as shown on the project plans. The unit price bid for each item shall be full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in the bid item.

402. PAYMENT FOR EXTRA WORK

When payment is made on a force account basis the amount shall be determined in accordance with Sections 9-1.03 through 9-1.03D of the State Specifications, except that actual payroll taxes and required contributions will be used in lieu of the labor surcharge specified in Section 9-103A (1b).

403. EXISTING FACILITIES

Attention is directed to Section 8-1.10 of the State Specifications and these special provisions.

It is not the intent of the plans to show the exact locations of existing underground utilities or structures and the agency Engineer assumes no responsibility therefore. Whenever any such utilities are indicated thereon the Contractor shall be responsible for verifying their actual location and depth in the field, by potholing if necessary. The Contractor shall be responsible for any damage to utilities shown on the plans, or as specified herein, as a result of his operations.

Existing utilities in the easements on private property are not shown on the plans; the contractor shall be responsible for locating said utilities prior to any construction and shall keep said utilities continuously functioning during the course of the work. If the contractor for his own reasons needs to shut off or relocate any of said utilities, the Contractor shall give advance notice to and coordinate with the owner of the property and the occupant.

Equipment operating under PG&E electric and Pacific Bell communications lines shall observe minimum clearance from the lines, and all other requirements, as set forth in Article 86 of the Electrical Safety Orders of the State division of Industrial Safety and Pacific Bell requirements.

If applicable the Contractor shall keep the existing drainage system and sanitary sewer system fully functional at all times. If the Contractor for his own reasons desires to block off any portion of these systems, he shall construct a bypass system capable of handling the flow. This bypass system, if constructed, will be for the convenience of the Contractor and shall be constructed at his own expense.

The Contractor shall exercise care not to damage existing property including but not limited to trees, shrubs and landscaping outside the work area. Any damage caused by the contractor shall be replaced by the Contractor at his expense.

Prior to commencing any excavation, the Contractor shall notify the following three (3) days in advance:

Underground Service Alert (800) 642-2444

Full compensation for complying with the above provisions shall be considered as having been included in the price paid for various contract items of work and no separate payment will be made thereafter.

404. DUST CONTROL

1. Exposed soils shall be watered as many times a day as required to ensure proper dust control seven (7) days a week for the duration of the Project.
 - a. Cover stockpiles of soil, sand, and other similar materials
 - b. Cover trucks hauling debris, soil sand, and other similar materials
 - c. Sweep surrounding streets during demolition and construction as required to reduce PM10 emissions.
2. The Contractor shall maintain and operate construction equipment so as to minimize exhaust emissions of PM10 and other pollutants by means of the following:
 - a. Prohibition on idling motors of equipment that is not in use, and by trucks waiting in queues.

- b. Implementation of specific maintenance programs (to reduce emissions) for equipment in frequent use during the construction period.

Full compensation for complying with the above provisions shall be considered as having been included in the price paid for various contract items of work and no separate payment will be made thereafter.

SECTION V - BIDDER'S SECTION

501. INSTRUCTIONS TO BIDDERS

1. BIDDER'S REPRESENTATIONS

Each bidder by submitting a bid represents that:

- 1.1 The bidder has read and understands the bid package and the bid is in accordance with all of the requirements of the bid package and applicable law.
- 1.2 Neither the bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7.
- 1.3 The bidder understands that quantities of unit price items may vary from the estimates provided in the Special Provisions.
- 1.4 Representatives of the bidder have visited the Project site and have familiarized themselves with the conditions under which the Project work is to be performed so as to ensure that the Project Work may be performed for the amount bid.
- 1.5 The bidder has informed the Town in writing no later than five (5) working days prior to the time specified for bid opening of any apparent conflicts, errors, or ambiguities contained in the bid package or between the contents of the bid package and the Project site.

2. EXAMINATION OF PLANS, SPECIFICATIONS, CONTRACT, AND WORK SITE

- 2.1 The bidder shall examine carefully the work site, the Project Plans and Special Provisions, and the entire Bid Package. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the general and local conditions to be encountered, as to the character, quality and scope of work to be performed, the quantities of materials to be furnished and as to the requirements of the Contract Documents.
- 2.2 The submission of a bid shall also be conclusive evidence that the bidder is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information was

reasonably ascertainable from an inspection of the site and the records of exploratory work done by the Town as shown in the bid documents, as well as from the Project Plans and Special Provisions.

- 2.3 Where the Town has made investigations of work site conditions including subsurface conditions in areas where Work is to be performed, or in other areas, that may constitute possible local material sources, bidders may, upon request, inspect the records of the Town as to those investigations.
- 2.4 Where there has been prior construction by the Town or other public agencies within the project limits, records of the prior construction that are currently in the possession of the Town and that have been used by, or are known to, the designers and administrators of the project will be made available for inspection by bidders, upon request, subject to this Section 3. Such records may include, but are not limited to, as-built drawings, design calculations, foundation and site studies, project reports and other data assembled in connection with the investigation, design, construction and maintenance of the prior projects.
- 2.5 Inspection of the records of investigations and project records in the possession of the Town may be made at the Department of Public Works.
- 2.6 When a log of test borings or other record of geotechnical data obtained by the Town's investigation of surface and subsurface conditions is included with the Project Plans, it is furnished for the bidders' information and its use shall be subject to this Section 2.
- 2.7 The availability or use of information described in this Section 3 is not to be construed in any way as a waiver of any of the provisions in this Section 3 and bidders are cautioned to make independent investigations and examinations as they deem necessary to be satisfied as to conditions to be encountered in the performance of the Work and, with respect to possible local material sources, the quality and quantity of material available from the property and the type and extent of processing that may be required in order to produce material conforming to the requirements of the Technical Specifications.
- 2.8 The Town assumes no responsibility for conclusions or interpretations made by a bidder based on the information or data made available by the Town. The Town does not assume responsibility for representation made by its officers or agents before the execution of the Agreement concerning surface or subsurface conditions, unless that representation is expressly stated in the Contract Documents.

- 2.9 No conclusions or interpretations made by a bidder from the information and data made available by the Town will relieve a bidder from properly fulfilling the terms of the Agreement.

3. PRE-BID COMMUNICATION AND INTERPRETATION OF THE BID PACKAGE

- 3.1 Any bidder that discovers any apparent conflicts, errors, or ambiguities contained in the bid package or between the contents of the bid package and the Project site, or that has questions or requires clarification concerning the bid package or its intent must inform the Town in writing as soon as reasonably possible, but no later than five (5) working days before the date specified for bid opening. Such notice to the Town must be sent to the address specified in the Notice Inviting Bids for questions concerning the bid package. Questions received less than five (5) working days before the time specified for opening bids may not be answered.
- 3.2 Any interpretation, correction or change of the bid package prior to bid opening will be made by addendum prepared by an authorized representative of the Town and transmitted to all known bid package recipients and will posted on the Project page on the Town website. No other interpretation or information concerning the bid package issued prior to the date specified for opening bids will be binding. All addenda prepared by an authorized representative of the Town and issued prior to the time and date specified for opening bids will form a part of the contract documents and must be acknowledged on the bid forms. It is the responsibility of the bidder to check the Project web page on the Town's website for addendum frequently and in a timely manner. Any changes, exceptions or conditions concerning the Project and/or the bid package submitted by any bidder as part of a bid may render that bid non-responsive.

4. PRE-BID ACCESS TO THE PROJECT SITE

- 4.1 Prior to submitting a bid, it will be the sole responsibility of each bidder to conduct any additional examination, investigation, exploration, testing, study or other inquiry and to obtain any additional information pertaining to the physical conditions (including surface, subsurface, and underground utilities) at or near the Project site that may affect the cost, progress, or performance of the Project, and that the bidder deems are necessary to prepare its bid for performance of the Project in accordance with the bid package and contract documents. Bidders seeking any such additional examination or other inquiries or information concerning the Project will do so at the bidder's sole expense.

- 4.2 Bidders seeking to conduct any additional examination or other inquiry at the Project site must request site access from the Town at least two (2) working days in advance. The location of any excavation, boring or other invasive testing will be subject to approval on behalf of the Town and any other agencies with jurisdiction over such testing. Bidders may not conduct tests at the Project site prior to obtaining Town approval. The Town may require bidders to execute an access agreement prior to approving testing at the Project site. Once approved testing is complete, Bidders must fill all trenches or holes, restore all pavement to match existing structural section, and otherwise clean up and restore the test site to its pre-test condition.

5. BIDDING PROCEDURE

- 5.1 Bids must be delivered to the Town of Ross, 31 Sir Francis Drake Blvd., Ross CA 94957 no later than the time and date specified in the Notice Inviting Bids. Bids will be opened and read publicly at that time. Bids that are submitted late according to the official time kept by the Public Works Department will be returned unopened. Telephones for use by bidders are not available at the Town offices.
- 5.2 In accordance with California Public Contract Code Section 20170, Bids must be presented under sealed cover. Bids must be submitted using the Bidder's Proposal and Bid Schedule furnished with the bid package. Bids must include all documents listed in the Bidder's Check List completed in accordance with the bid package. Bids must bear the bidder's legal name and be signed by a representative authorized to bind the bidder. Bids must be typed or written in ink. Corrections may be made if initialed by the individual signing the bid. No oral or telegraphic modifications of bids, including facsimile modifications, will be considered. Bids that are incomplete or that are not presented on the bid forms furnished with the bid package may be deemed non-responsive.
- 5.3 Each bid must give the full business address of the bidder. Bids of partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership, or by an authorized representative, followed by the printed name and title of the person signing. Bids of corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary or other person authorized to bind the corporation. The name of each person signing shall also be typed or printed below the signature. Upon request of the Town,

bidders will furnish satisfactory evidence of the authority of the person signing the bid. Bids of joint ventures must include a certified copy of the legal agreement constituting the joint venture.

- 5.4 No person, firm, corporation, partnership or legal joint venture may submit more than one bid for the Project. However, a person, firm, corporation, partnership or legal joint venture that has submitted a subcontract proposal to a bidder, or that has quoted prices on materials to a bidder may submit a subcontract proposal, quote prices to other bidders and submit its own bid.
- 5.5 In accordance with California Public Contract Code Section 20170, all bids must include one of the forms of bidder's security specified in the Notice to Bidders in an amount of at least ten (10) per cent of the total of the bid prices for the base bid and those additive or deductive items specifically identified in the Notice to Bidders for the purpose of determining the lowest price bid. Bidders that elect to provide bidder's security in the form of a bid bond must execute a bid bond using the form provided in the bid forms. The bidder's security is tendered as a guarantee that the successful bidder, if awarded the Project contract, will execute and submit to the Town all required bonds, certificates of insurance, completed contract forms and other documents listed in the Contract Check List and enter into a contract with the Town within ten (10) working days of receipt of the notice of award. The bidder's security of any successful bidder that fails to do so will be forfeited to the Town. All bidders' security not forfeited to the Town will be returned once a successful bidder provides all required documents and enters a contract with the Town in accordance with all applicable bid package requirements. Forfeiture of the bidder's security to the Town will not waive or otherwise limit any other remedy available to the Town under applicable law.
- 5.6 In accordance with California Business and Professions Code Section 7028.15, Public Contract Code Section 20103.5, and as specified in the Notice to Bidders, all Project work must be performed by properly licensed contractors and subcontractors with active licenses in good standing as of the date and time specified for bid opening, or, if the Project involves federal funds, no later than the time the Project contract is awarded. Bidders must verify their Contractor's License number and license expiration date on the proposal cover page under penalty of perjury. Bids that do not satisfy applicable licensing requirements will be considered non-responsive and rejected and may subject the bidder to criminal and/or civil penalties.
- 5.7 All bids must include a completed experience and financial Qualifications on the forms provided. By submitting a bid, bidders authorize Town representatives to verify any and all information provided on the bidder's

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

- 5.8 Bids may be withdrawn prior to the time set for bid opening by a written request signed by an authorized representative of the bidder filed with the Town Clerk. The bid security submitted with bids so withdrawn will be returned to the bidder. Bidders that have withdrawn their bid in accordance with this provision may submit a new bid prior to the time set for bid opening in accordance with all applicable bid package requirements. Bids may not be withdrawn during the ninety (90) day period after the time set for bid opening except as permitted by law pursuant to California Public Contract Code Section 5100, *et seq.* Any other bid withdrawal will result in forfeiture of the bidder's bid security to the Town.

6. BID PROTESTS

Any protest of the proposed Project award must be submitted in writing to the Town no later than 5:00 PM on the third (3rd) business day following the date of the bid opening.

- 6.1 The protest must contain a complete statement of the basis for the protest.
- 6.2 The protest must state the facts and refer to the specific portion of the document or the specific statute that forms the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.
- 6.3 The party filing the protest must concurrently transmit a copy of the protest to the proposed awardee.
- 6.4 The party filing the protest must have actually submitted a bid for the Project. A subcontractor of a party filing a bid for the Project may not submit a bid protest. A party may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.
- 6.5 The procedure and time limits set forth in these Instructions to Bidders are mandatory and are the bidders' sole and exclusive remedy in the event of a bid protest. Any bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing of a challenge of the award pursuant to the California Public Contract Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.
- 6.6 The Town shall review all timely protests prior to award of the Project. The Town shall not be required to hold an administrative hearing to consider any protests, but may do so at its option. At the time of the Town Council's consideration of the Project award, the Town Council shall also consider the merits of any timely protests. The Town Council may either reject the protest and award to the lowest responsible bidder or accept the protest and award the bid to the next lowest responsible bidder. Nothing in this section shall be construed as a waiver of the Town Council's right to reject all bids.

7. AWARD

- 7.1 In accordance with applicable law, the Town reserves the right to reject any or all bids and to waive any informality in any bid. The Town reserves the

right to accept any portion of any bid, unless the bid package expressly provides that the award will be made as a whole. If the Town elects to award a contract for performance of the Project, the contract will be awarded in accordance with California Public Contract Code Section 20162 and other applicable law to the responsible bidder submitting a responsive bid with the lowest total bid price for the base bid and the additive or deductive alternate items listed in the Notice Inviting Bids. In accordance with the contract documents and other applicable law, the Town may add or deduct items of work from the Project after the lowest responsible bidder is determined.

- 7.2 The successful bidder must submit to the Town complete, executed copies of all documents specified in the Contract Checklist within ten (10) working days of receiving written notice of award of the Project. Bidder's security of any successful bidder that fails to do so will be forfeited to the Town.
- 7.3 The successful bidder and any subcontractors and others engaged in performance of the Project must have valid local business license(s), as applicable, before commencing work on the Project.
- 7.4 Upon verifying that the successful bidder has provided complete, executed copies of all documents specified in the Contract Checklist an authorized Town representative will execute the Project contract, and the Town will issue to the successful bidder a notice to proceed specifying the Project commencement date. The number of days within which the Project must be complete begins to run on the Project commencement date.

8. PRICING

- 8.1 If an inconsistency exists between the amount listed for a unit price in a bid and the total listed for that bid item (e.g., if the total listed for a bid item does not equal the unit price listed in the bid multiplied by the quantity listed), subject to applicable law, the unit price will be deemed to accurately reflect the bidder's intent concerning the bid item and the intended total for the bid item will be deemed to be the unit price as listed in the bid multiplied by the quantity listed.
- 8.2 If the Project bid price is a lump sum total made up of smaller individual bid item prices and an inconsistency exists between the lump sum total bid price and any individual bid item price, subject to applicable law, the individual bid item prices as listed in the bid will be deemed to accurately reflect the bidder's intended bid for the Project and the intended lump sum total bid for the Project will be deemed to be the sum of the individual bid

item prices as listed in the bid, even if that sum is different from the amount actually listed as the lump sum total bid for the Project.

- 8.3 Any federal, state, or local tax payable on articles to be furnished for the Project shall be included in the lump sum total bid price and paid by the Contractor under the contract. The Town is exempt from federal excise tax and will provide a certificate of exemption to the successful bidder upon request.

9. QUANTITIES

- 9.1 Quantities, including but not limited to, material or labor quantities, that are provided in the bid package concerning the Project are estimates only and are provided solely as a general indication of the Project scope. The Town does not warrant that such quantity estimates provided in the bid package represent the actual quantities required to perform the Project in accordance with the contract documents. Such quantity estimates do not bind the Town, and bidders should not rely on them in preparing their bids. Each bidder is solely responsible for determining the quantities on which to base their bids in light of information contained in the bid package, bidder investigation and analysis of the Project and the Project site, and any other analysis or expertise of the bidder concerning the Project.
- 9.2 The Town may amend, decrease or increase the Project work in accordance with the bidding package and the contract documents. If the Town amends, decreases or increases the Project work prior to award of the Project each bidder will be solely responsible for determining the revised quantities, if any, on which to base their bid in light of information contained in the bid package and any amendments or addenda to the bid package, bidder investigation and analysis of the Project as amended, decreased or increased, the Project site, and any other analysis or expertise of the bidder concerning the Project.

10. SUBCONTRACTING

- 10.1 Bids must be in accordance with the requirements of the Subletting and Subcontracting Fair Practices, Act, California Public Contract Code Section 4100 and following. Bids must include a completed list of proposed subcontractors on the form included in the bid package. In accordance with California Public Contract Code Section 4104, completed lists of proposed subcontractors must include the name, business location, the portion (type or trade), and dollar amount of the Project work to be subcontracted for each subcontractor that will perform a portion of the Project work (including

special fabrication and installation of a portion of the work) valued in excess of one half of one percent of the total Project bid price.

- 10.2 In accordance with California Public Contract Code Section 4106, for any portion of the Project work with a value of more than one half of one percent of the total Project bid price for which no subcontractor is listed, or for which more than one subcontractor is listed, bidders certify by submitting their bids that they are qualified to perform that portion of the Project work and that they will perform that portion of the Project work with their own forces. Bidders may not substitute another subcontractor for a subcontractor listed in their bid except as permitted by the Town in accordance with Section 4107 and following of the California Public Contract Code.

11. ASSIGNMENT

- 11.1 Bidders may not assign, sublet, sell, transfer, or otherwise dispose of their bid or any right, title or interest in their bid, or their obligations under their bid, without the written consent of an authorized representative of the Town. Any purported assignment, subletting, sale, transfer or other disposition of a bid or any interest in a bid, or of any obligations under a bid without such written consent will be void and of no effect.

12. BONDS

- 12.1 The successful bidder must submit to the Town a performance bond within ten (10) working days of receiving written notice of award. If the Project involves expenditures in excess of twenty five thousand dollars (\$25,000), the successful bidder must submit to the Town a payment or labor and materials bond within ten (10) working days of receiving written notice of award. Prior to issuance of the final Project payment, the successful bidder must submit a Defective Material and Workmanship bond. All bonds must be executed by corporate sureties who are admitted surety insurers in the State of California in accordance with applicable law and acceptable to the Town. Individual sureties will not be accepted. All Project bonds must be executed using the forms provided in the bid package.
- 12.2 In accordance with California Civil Code Section 3247, the payment or labor and materials bond must be in the amount of one hundred percent of the total amount payable by the terms of the Project contract and guarantee payment to persons listed in California Civil Code Section 3181 for work performed and for charges for materials, supplies, and equipment provided under the Project contract (including amounts due under or subject to the Unemployment Insurance Code) in accordance with the requirements of California Civil Code Section 3248.
- 12.3 The performance bond must be in the amount of one hundred percent of the amount payable by the terms of the Project contract to guarantee the faithful performance of the Project work.
- 12.4 The Defective Material and Workmanship bond must be in the amount of ten percent of the final Project contract amount and guaranty the Project work against defects in materials, equipment, workmanship, or needed repair for one year from the Town's acceptance of the Project work.

13. LABOR LAWS

- 13.1 Bidders must comply with applicable provisions of the California Labor Code.
- 13.2 In accordance with California Labor Code Section 1861, bids must include a workers' compensation insurance certification on the form included in the bid package.

- 13.3 In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Project is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code shall be paid to all workers engaged in performing the Project.
- 13.4 In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for work in the locality in which the Project is to be performed. In accordance with California Labor Code Section 1773, the Town has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Project is to be performed for each craft, classification or type of worker needed to perform the Project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the Public Works offices and will be made available on request.
- 13.5 In accordance with California Labor Code Section 1777.1, contractors and subcontractors that are found guilty of willfully violating Chapter 1 of Part 7 of Division 2 of the Labor Code (except for Section 1777.5), or that are found guilty of such violations with intent to defraud, and entities in which such contractors or subcontractors have any interest, may be ineligible to bid on, be awarded, or perform Project work as a subcontractor.

502. BIDDER'S CHECKLIST

Did you include with your bid properly completed, accurate copies of the following documents in the following order using the forms included in the bid package?

- _____ Bidder's Checklist?
- _____ Proposal and Schedule of Bid Prices that state the bid as intended?
- _____ Copies of each addendum issued signed and dated on behalf of the bidder? (If applicable)
- _____ Signed non-collusion affidavit?
- _____ Executed bid bond?
- _____ Designation of subcontractors?
- _____ Experience and Financial Qualifications?
- _____ Debarment certification?
- _____ Arrange to have the sealed bid delivered to the Department of Public Works in the Town of Ross offices at 31 Sir Francis Drake Blvd. on or before the time specified for the bid opening in the notice inviting bids?

503. BIDDER'S PROPOSAL

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION TOWN PROJECT NO. 9040-45-MOR

Proposal of _____ (hereinafter called "BIDDER"), organized and existing under the laws of the State of _____, doing business as * _____ to the TOWN OF ROSS (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of the MORRISON RD PAVEMENT REHABILITATION, Project No. 9040-45-MOR in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party therein certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

In accordance with California Public Contract Code Section 20170, all bids must be presented under sealed cover and include one of the following forms of bidder's security: cash, cashier's check made payable to the Town, certified check made payable to the Town, or a bidder's bond. The amount of bidder's security provided must equal at least ten (10) percent of the total bid price for the base bid and the additive or deductive items listed in this notice. The successful bidder must submit to the Town complete, executed copies of all required document within ten (10) working days of receiving written notice of award of the project. Bidder's security of any successful bidder that fails to do so will be forfeited to the Town. Such required documents include, but are not limited to, a payment or labor and materials bond in an amount of at least 100 percent of the amount payable by the terms of the project contract and that satisfies the requirements of California Civil Code Section 3248, and a performance bond in an amount of at least 100 percent of the amount payable by the terms of the contract. All project bonds must be executed by an admitted surety insurer in accordance with applicable law and acceptable to the Town. Bids shall be marked: "Bid of (Contractor) for MORRISON RD PAVEMENT REHABILITATION, Project No. 9040-45-MOR," along with date and time of bid opening.

BIDDER hereby agrees to commence WORK under this contract within five (5) days of the date to be specified in the NOTICE TO PROCEED and to fully complete the

PROJECT within thirty (30) consecutive working days. BIDDER further agrees to pay as liquidated damages, the sum of \$100 per calendar day as provided in Section 14.11 of the General Provisions.

BIDDER acknowledges receipt of the following ADDENDA: _____

BIDDER agrees to perform the work described in the CONTRACT DOCUMENTS for the unit prices or lump sum prices stated on the attached BID SCHEDULE.

* Insert "a corporation" or "a partnership" or "an individual" as applicable.

504. BID SCHEDULE

MORRISON RD PAVEMENT REHABILITATION

NOTE: Bids shall include sales tax and all other applicable taxes and fees.

Bid Schedule A – Morrison Road

ITEM	GENERAL DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	AMOUNT
1	Mobilization	1	LS		
2	Traffic Control	1	LS		
3	Adjust Sanitary Sewer Manhole to Grade	1	EA		
4	Adjust Water Valve Box Frame and Cover to Grade	4	EA		
5	Roadway Excavation	255	CY		
6	Asphalt Concrete	567	TON		
7	Blue Two-Way Retroreflective Pavement Marker	2	EA		
BID SCHEDULE A TOTAL					

Respectfully submitted:
(Please type or print)

Signature

Address

Title

Date

License Number (if applicable)

Telephone Number

SEAL - if BID is by a Corporation

Attest

505. NON-COLLUSION AFFIDAVIT

This Affidavit to be fully executed

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

In accordance with Public Contract Code Section 7106,

_____, being first duly sworn,
deposes and says that he or she is _____ [President, Secretary,
Manager, Owner or Representative] of _____ [Name of Company
or Corporation or Owner] the party making the foregoing bid, that the bid is not made in
the interest of, or on behalf of, any undisclosed person, partnership, company,
association, organization, or corporation; that the bid is genuine and not collusive or
sham; that the bidder has not directly or indirectly induced or solicited any other bidder to
put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived,
or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain
from bidding; that the bidder has not in any manner, directly or indirectly, sought by
agreement, communication, or conference with anyone to fix the bid price of the bidder
or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of
that of any other bidder, or to secure any advantage against the public body awarding the
contract of anyone interested in the proposed contract; that all statements contained in
the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his
or her bid price or any breakdown thereof, or the contents thereof, or divulged information

or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing representations and all other representations made in the undersigned's proposal attached hereto are true and correct.

Signature of: President, Secretary,

Manager, Owner or Representative

506. BID BOND

[NOTE:

Bidders must use this form; use of any other bond form may render a bid non-responsive.]

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION TOWN PROJECT NO. 9040-45-MOR

KNOW ALL PERSONS BY THESE PRESENTS, that the TOWN OF ROSS ("Town"), a municipal corporation located in the County of Marin, State of California, has received a Proposal from

_____,
hereinafter designated as Principal, whereby Principal agrees to enter into a Contract with the Town for the improvements more particularly described in all documents forming the complete Contract entitled "MORRISON RD PAVEMENT REHABILITATION", which said complete Contract is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required to furnish a bond in connection and with said Proposal, provided that if said Principal fails or refuses to enter into said Contract, the Surety of this bond will pay the Town the amount hereinafter set forth.

NOW, THEREFORE, we the Principal and _____,
_____, as Surety, are held and firmly bound unto the Town of Ross in the penal sum of \$_____, lawful money of the United States, being not less than ten percent (10%) of the estimated Contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH that if said Principal, his/her/its heirs, executors, administrators, successors or assigns, shall fail to enter into said Contract, then said Surety will pay the same in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond a reasonable attorney's fee in such suit, which fee shall be fixed by the Court.

AS FURTHER TERMS OF THIS BOND, IT IS UNDERSTOOD AS FOLLOWS:

- (a) If said Proposal shall be rejected, or in the alternative;

- (b) If said Proposal shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Proposal) and shall furnish a bond for his/her/its faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Proposal then, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Town may accept such Proposal; and said Surety does hereby waive notice of any such extension.

PROVIDED FURTHER, that no final settlement between the Town and Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOTE: To be signed by Principal and Surety and acknowledgment and notarial seal attached.

(SEAL)

PRINCIPAL

By: _____

Title:

SURETY

By: _____

Title:

(Address of Surety)

507. DESIGNATION OF SUBCONTRACTORS

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION TOWN PROJECT NO. 9040-45-MOR

In compliance with the provisions of Section 4100-4107 of the Government Code of the State of California, and any amendments thereof, each Bidder shall set forth below the name and the location of the mill, shop or office of each subcontractor who will perform work or labor or render service to the contractor in or about the construction of the work or improvement to be performed under these specifications, and the portion of the work which will be done by each subcontractor.

If the contractor fails to specify a subcontractor for any portion of the work to be performed under the contract, he shall be deemed to have agreed to perform such portion himself, and he shall not be permitted to subcontract that portion of the work except under the conditions hereinafter set forth.

Subletting or subcontracting of any portion of the work, as to which no subcontractor was designated in the original bid shall be permitted in cases of public emergency or necessity, and then only after a finding reduced in writing as a public record of the Legislative Body of the Owner.

Name of Sub-contractor And Place of Business	License Class	Portion of Work to be Performed

508. EXPERIENCE AND FINANCIAL QUALIFICATIONS

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION TOWN PROJECT NO. 9040-45-MOR

The following statement as to experience and financial qualifications of the Bidder are submitted in conjunction with the proposal, as a part thereof and the truthfulness and accuracy of the information is guaranteed by the bidder.

The Bidder has been engaged in the contracting business under the present business name for ____ years. Experience in work of a nature similar to that covered in the proposal extends over a period of ____ years.

The Bidder currently holds a valid Contractor's License of the following Class or Classes, _____ issued by the Contractors' License Board under the provision of Chapter 9 of Division 3 of the Business and Professions Code of the State of California.

The Bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to him, except as follows: (Name any and all exceptions and reasons therefore).

In the last 10 years, have you or your firm been a party to an arbitration, lawsuit or any other proceeding involving work that you or your firm performed? yes ____ no ____.

If so, please provide the following information as to each such proceeding:

- (1) the name, address and telephone numbers of all parties to the proceeding;
- (2) the general nature of the claims being made against or by your firm;
- (3) the outcome of the proceeding.

Have you or your firm ever requested payment of more money than any of your clients have been willing to pay?

yes ____ no ____

As to each such request, please state:

- (1) the name, address and telephone number of the client;

- (2) the amount and nature of your claim;
- (3) the nature of the client's position;
- (4) the outcome of your claim.

LIST OF CONTRACTS SATISFACTORILY COMPLETED IN THE LAST THREE YEARS:

The following contracts have been satisfactorily completed in the last three years for the person, firm, or authority indicated, and to whom reference is made: (Name five contracts.)

Year	Type of Work	Contract Amount	Location and for Whom Performed

509. LIST OF PLANT AND EQUIPMENT OWNED BY THE BIDDER

Following is a list of plant and equipment owned by the Bidder, and which is definitely available for use on the proposed work as required:

Quality	Name, Type & Capacity	Condition	Location

510. DEBARMENT CERTIFICATION

By submitting its bid, the bidder certifies in accordance with California Public Contract Code Section 6109 that neither the bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid is ineligible to perform work on public

works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109, Contractors and subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on public works projects.

SECTION VI - CONSTRUCTION DOCUMENTS

601. CONSTRUCTION AGREEMENT

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION TOWN PROJECT NO. 9040-45-MOR

This Agreement made and entered into this ____ day of _____, 2025, by and between _____ (“Contractor”) and the Town of Ross (“Town”).

RECITALS

- A. The Town gave notice inviting bids to be submitted by August 6, 2025 at 2PM PST for the MORRISON RD PAVEMENT REHABILITATION by published notice and/or posting in accordance with California Public Contract Code Section 20164 and other applicable law.
- B. On August 6, 2025, Town representatives opened bids for the MORRISON RD PAVEMENT REHABILITATION and read the bids aloud.
- C. On August 14, 2025, the Town Council awarded the MORRISON RD PAVEMENT REHABILITATION to the Contractor and directed Town staff to send the Contractor written notice of award of the project. The Town Council conditioned award of the project on the Contractor’s providing executed copies of all documents specified in the contract checklist included in the bid package within ten (10) working days of receiving written notice of award of the project.
- D. The Contractor has provided the Town executed copies of all documents specified in the contract checklist included in the bid package within ten (10) working days of receiving written notice of award.

AGREEMENT TERMS

The Town and Contractor agree as follows:

- A. The work: The Contractor will furnish all labor, materials, equipment, tools, transportation, services, and appliances necessary to complete in a good and workmanlike manner the MORRISON RD PAVEMENT REHABILITATION (“Work”) as shown in the Specifications and Project Plans in accordance with the Contract Documents and applicable law.

- B. Time for Completion: The Contractor must complete the Work in accordance with the Contract Document within thirty (30) working days from the date of issuance of the Notice to Proceed (or approved extensions thereof).
- C. Remedies for Failure to Timely Complete the Work: It is agreed that Contractor's failure to fully perform the Work by the Time for Completion (as modified by approved extensions) will result in damages being sustained by the Town. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each calendar day in excess of the Time for Completion (as modified by approved extensions), the Contractor shall pay to the Town, or have monies withheld from monies to it, liquidated damages of \$500 per day in accordance with California Government Code Section 53069.85 and Section 14.10 of the Standard Specifications.
- D. Contract Price and Payment: Town shall pay Contractor _____ Dollars (\$) for completion of the Work. The Town will have no obligation to pay the Contractor any amount in excess of this Contract Price unless this Agreement is first modified in accordance with its terms. The Town's obligation to pay the Contractor under this agreement is subject to and may be offset by, charges that may apply to the Contractor under this Agreement, including but not limited to charges for liquidated damages, defective work, and/or substitute performance in accordance with the Contract Documents.
- E. Prevailing Wages: In accordance with California Labor Code Section 1771, Contractor will pay and will require all Subcontractors to pay all workers on the work a salary or wage at least equal to the prevailing rate of per diem wages for such work as set forth in the wage determinations and wage standards applicable to this work, a copy of which is on file with the Town Clerk, may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>], and are deemed included in the Contract Documents, and shall be made available to any interested party on request. A copy of the prevailing wage rate of per diem wage shall be posted at the job site. In accordance with California Labor Code Section 1775, Contractor shall forfeit to the Town, as a penalty, Forty Dollars (\$40.00) for each calendar day or portion thereof for each worker paid (either by Contractor or Subcontractors) less than the prevailing rate wage rate. The Work covered by this Agreement is a "public work" as that term is defined in California Labor Code, Division 2, Part 7, Chapter 1.
- F. 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

- G. The Contract Documents: This agreement consists of the following documents (“Contract Documents”), all of which are incorporated into and made part of this Agreement as if set forth in full. In the event of a conflict between or among the Contract Documents, precedence will be in the following order:
1. This Agreement and change orders and other amendments to this agreement signed by authorized representatives of the Town and the Contractor.
 2. The General Provisions and change orders and other amendments to the General Provisions signed by authorized representatives of the Town and the Contractor.
 3. Standard Specifications, Cities and County of Marin, Department of Public Works, latest edition (“County Standard Specifications”).
 4. Uniform Construction Standards Approved and Adopted by Cities of Marin and County of Marin, latest edition (“County Standard Drawings” or “MUCS”).
 5. State of California Business and Transportation Agency, Department of Transportation, Standard Plans and Specifications, latest edition (“State Plans” or “State Specifications”).
 6. The Special Provisions, addenda to the Special Provisions prepared by authorized representatives of the Town and issued prior to bid opening, Equal Product Proposals accepted by the Town and signed by authorized Town representatives prior to bid opening and change orders and other amendments to the Specifications signed by authorized representatives of the Town and the Contractor.
 7. The Project Plans, addenda to the Project Plans prepared by authorized representatives of the Town and issued prior to bid opening, Equal Product Proposals accepted by the Town and signed by authorized Town representatives prior to bid opening and change orders and other amendments to the Project Plans signed by authorized representatives of the Town and the Contractor.
 8. Notice Inviting Bids.
 9. Instructions to Bidders.
 10. The successful bidder’s completed Proposal Form and Bidder’s Sheet.

11. The successful bidder's completed Contractor License Information.
 12. The successful bidder's completed List of Proposed Subcontractors.
 13. The successful bidder's Workers Compensation Insurance Certification.
 14. The successful bidder's completed Non-collusion Affidavit.
 15. The successful bidder's Debarment Certification.
 16. The successful bidder's completed Certificates of Insurance and Endorsements.
 17. The successful bidder's executed Performance Bond.
 18. The successful bidder's executed Payment Bond.
 19. Executed Escrow for Deposit Agreement, if applicable.
 20. Change Order Form.
 21. The Maintenance Bond form included in the bid package that the Contractor must execute prior to release of final payment under the Contract.
 22. The successful bidder's Qualification Statement, if any.
 23. The successful bidder's signed Signature Form.
- H. Assignment: No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.
- I. Notices: All notices permitted or required hereunder shall be addressed as follows and shall be deemed delivered upon posting the notice first class, U.S. mail, postage prepaid:

Any written notice to the Town shall be sent to:

Director of Public Works
Town of Ross
31 Sir Francis Drake Blvd.
Ross, CA 95939

Any written notice to Contractor shall be sent to:

- J. Governing law; Venue: The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine. Venue shall be in the County of Marin.
- K. Severability: If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- L. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §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 the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.
- M. Pursuant to Labor Code Sections 1860 and 1861, in accordance with Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. By executing this Agreement, Contractor certifies that it is "aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and

[Contractor] will comply with such provisions before commencing the performance of the work of this contract."

IN WITNESS WHEREOF, TOWN and CONTRACTOR have caused this Agreement to be executed the day and year first above written.

TOWN OF ROSS

CONTRACTOR

Attest:

Cynthia Martel, Town Clerk

602. PERFORMANCE BOND

(On Surety Letterhead)

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION
TOWN PROJECT NO. 9040-45-MOR

WHEREAS, the TOWN OF ROSS (hereinafter designated as "Town"), State of California, and _____, (hereinafter designated as "Principal"), have entered into an agreement whereby Principal agrees to complete improvements specified in the Agreement and all documents forming the complete contract, which said agreement dated _____, and identified as "MORRISON RD PAVEMENT REHABILITATION, TOWN PROJECT NO. 9040-45-MOR", are referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

NOW, THEREFORE, we the Principal, and _____, as surety, are held and firmly bound unto the Town in the penal sum of \$_____, lawful money of the United States, being not less than one hundred (100%) percent of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bound Principal, his/hers/its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their 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 defend, indemnify and save harmless Town, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by Town in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

And the said Surety hereby stipulates and agrees that upon termination of the Agreement, the Town reserves the right to refuse tender of the principal by the surety to complete the Work.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anyway effect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and surety above named, on _____.

NOTE: To be signed by Principal
and Surety and acknowledgment
and notarial seal for both attached.

(SEAL)

PRINCIPAL

By: _____
Title: _____

SURETY

By: _____
Title: _____

It has been confirmed that the Surety is admitted by the Department of Insurance to transact business in the State of California and has a Best's rating of at least A+.

The above bond is accepted and approved this ____ day of _____, 20__.

Attorney for the Town of Ross

603. LABOR AND MATERIALS BOND

(On Surety Letterhead)

(CONSTRUCTION)

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION
TOWN PROJECT NO. 9040-45-MOR

KNOW ALL PERSONS BY THESE PRESENTS, that the TOWN OF ROSS ("Town") a municipal corporation located in the County of Marin, State of California, by Resolution No. , has awarded a contract to and has entered into an agreement with _____, hereinafter designated as "Principal" whereby Principal agrees to complete the improvements more particularly described in all documents forming the complete contract entitled "MORRISON RD PAVEMENT REHABILITATION TOWN PROJECT NO. 9040-45-MOR", which said agreement is hereby referred to and made a part hereof; and

WHEREAS, pursuant to California Civil Code Section 3247, said Principal is required to furnish a bond in connection and with said contract, provided that if said Principal, or any of his/her/its contractors, shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth; and

WHEREAS, pursuant to California Civil Code Section 3248, such payment bond must be in a sum not less than one hundred percent (100%) of the total amount payable by the terms of the Agreement, and must satisfy the other requirements specified in that section.

NOW, THEREFORE, we the Principal and _____, as surety, are held and firmly bound unto the TOWN OF ROSS in the penal sum of \$_____, lawful money of the United States, being not less than one hundred (100%) percent of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his/her/its heirs, executors, administrators, successors or assigns, or its subcontractors, shall fail to pay any of the persons named in Section 3181 of the Civil Code, or to pay for any labor, materials, provisions, provender, or other supplies or teams used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or fail to pay for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Principal or any subcontracts of the Principal pursuant to Section 13020 of the Unemployment Insurance code with respect to such work or labor, then said Surety will pay the same in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond a reasonable attorney's fee in such suit, which fee shall be fixed by the Court.

AS FURTHER TERMS OF THIS BOND, IT IS UNDERSTOOD AS FOLLOWS:

1. This bond and all its provisions shall inure to the benefit of and all persons named in Section 3181 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.
2. This bond is given to comply with the provisions of Chapter 7, Part 4, Division 3, of the Civil Code. The liability of the Principal and Surety hereunder is governed by the provisions of said Chapter, all acts amendatory thereof, and all other statutes referred to therein.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this ____ day of _____, 20__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

NOTE: To be signed by Principal
and Surety and acknowledgment
and notarial seal attached.

(SEAL)

PRINCIPAL

By: _____

Title: _____

SURETY

By: _____

Title: _____

It has been confirmed that Surety is admitted by the Department of Insurance to transact business in the State of California and has a Best's rating of at least A+.

The above bond is accepted and approved this ____ day of _____, 20____.

Attorney for the
TOWN OF ROSS

604. DEFECTIVE MATERIAL & WORKMANSHIP BOND

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION
TOWN PROJECT NO. 9040-45-MOR

KNOW ALL PERSONS BY THESE PRESENTS, that the TOWN OF ROSS ("Town") a municipal corporation located in the County of Marin, State of California, has awarded a contract to and has entered into an agreement with _____, hereinafter designated as "Principal" whereby Principal agrees to complete the improvements more particularly described in all documents forming the complete contract entitled "MORRISON RD PAVEMENT REHABILITATION, TOWN PROJECT NO. 9040-45-MOR", which said agreement is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required to furnish a bond in connection and with said contract, to protect the Town against the results of defective materials or workmanship for a period of 1 year after completion and acceptance.

NOW, THEREFORE, we the Principal and _____, as surety, are held and firmly bound unto the TOWN OF ROSS in the sum of \$_____, lawful money of the United States, being not less than ten (10%) percent of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said work is found to contain defects in material or workmanship within a period of 1 year from the date of completion and acceptance and the Principal, his/her/its heirs, executors, administrators, successors or assigns, shall fail to correct such defects, then said Surety will pay the cost for correction of any defects in material or workmanship which appear within said 1 year in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond a reasonable attorney's fee in such suit, which fee shall be fixed by the Court.

If any action shall be brought by the Town upon the bond, a reasonable attorney's fee, to be fixed by the Court, shall be and become a part of the Town's Judgment in any action.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the

specifications.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

NOTE: To be signed by Principal
and Surety and acknowledgment
and notarial seal attached.

(SEAL)

PRINCIPAL

By: _____

Title: _____

SURETY

By: _____

Title: _____

The above bond is accepted and approved this ____ day of _____, 20____.

Attorney for the
TOWN OF ROSS

605. GUARANTEE

TOWN OF ROSS

MORRISON RD PAVEMENT REHABILITATION TOWN PROJECT NO. 9040-45-MOR

Project Description:

Partial demolition, relocation, and reconstruction of existing residential structure, remove and replace plumbing, electrical, HVAC, remove existing foundation and construct new helical pier and grade beam foundation at new location, reset structure on foundation at new floor elevation, reconnect utilities, finish carpentry, in the Town of Ross.

Date of Acceptance:

We hereby guarantee that the work we have installed for the Town has been done in accordance with the approved Plans and Specifications as well as all applicable State and local regulations and that the work as installed will fulfill the requirements of the guarantee. We agree to repair or replace any or all of our work, together with any other adjacent damages resulting from our work, that may prove to be defective in its workmanship or material within a period of ONE YEAR from the date of acceptance of the above-named work by Town without any expense whatsoever to the Town, ordinary wear and tear and unusual abuse or neglect excepted.

Within fifteen (15) days after being notified in writing by Town of any defects in the work, we agree to commence and prosecute with due diligence all work necessary to fulfill the terms of this guarantee, and to complete the work within a reasonable period of time (not to exceed thirty (30) days after commencement of the repair work); and in the event of our failure to so comply, we collectively and separately, do hereby authorize said Town to proceed to have such work done at our expense and we will honor and pay the cost and charges therefor upon demand.

DATED: _____

CONTRACTOR

BY: _____

Title: _____

(To be signed and notarized before acceptance of project).

606. ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the Town of Ross, whose address is 31 Sir Francis Drake Blvd., Ross CA, hereinafter called "Town", and _____, whose address is _____, hereinafter called "Contractor", and _____, whose address is _____, hereinafter called "Escrow Agent"

For consideration hereinafter set forth, the Town, Contractor, and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Town pursuant to the Construction Contract entered into between the Town and Contractor for the project entitled _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Town shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as substitute for Contract earnings, the Escrow Agent shall notify the Town within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Town and Contractor. Securities shall be held in the name of _____ and shall designate the Contractor as the beneficial owner.
2. The Town shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the Town makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investments of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Town pays the escrow agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Town. These

expenses and payment terms shall be determined by the Town, Contractor and Escrow Agent.

5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of the Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Town.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Town to the Escrow Agent that Town consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The Town shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven (7) day's written notice to the Escrow Agent from the Town of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Town.
8. Upon receipt of written notification from the Town certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on the written notifications from the Town and the Contractor pursuant to Sections (4) to (6) inclusive, of this agreement and the Town and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Town and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures, are as follows:

Town:

Contractor:

Title: _____

Title: _____

Name: _____

Name: _____

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Town and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of Town:

On behalf of Contractor:

Title

Title

Name

Name

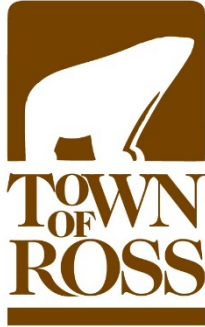
Signature

Signature

Address

Address

SECTION VII - TECHNICAL SPECIFICATIONS



SECTION VII - TECHNICAL SPECIFICATIONS (Special Provisions)

for

Town of Ross

Morrison Rd Pavement Rehabilitation
Project No. 9040-45-MOR

July 2025

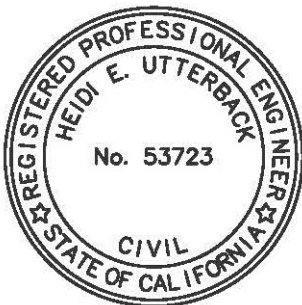
Prepared By:

Heidi E. Utterback

Heidi E. Utterback, RCE 53723

07/15/25

Date



Coastland



1400 Neotomas Avenue
Santa Rosa, CA 95405
(707) 571-8005

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SECTION 10

SPECIAL PROVISIONS

10-1 GENERAL

10-1.01 Description of Work

The work in general consists of pavement grinding, asphalt concrete paving, and such other items of work as are required to complete the project.

The estimate of the quantities of work to be done is approximate only, being as a basis for the comparison of bids, and the Town does not expressly or by implication agree that the actual amount of work will correspond therewith but reserves the right to increase or decrease the amount or any portion of the work as directed by the Town Engineer.

Incidental items of construction necessary to complete the whole work in a satisfactory and acceptable manner as shown on the plans and as provided for in the specifications and not specifically referred to in this section, shall be understood to be furnished by the Contractor.

10-1.02 Construction Limitations

The Contractor will be expected to conduct his operations in a manner which creates a minimum damage to the natural vegetation and landscaping, paving and gravel areas. Care shall be exercised to avoid hazards that may cause injury to persons, animals, or property either during working hours or after work hours, which will include dust control, backfilling trenches or placement of steel plates and temporary fencing as required.

Equipment will be restricted to the immediate area of construction and trenches will be backfilled as soon as possible.

Receptacles for construction residue, including oil, cleaning fluids and litter, will be covered. Such residues will be disposed of in a proper manner.

Mufflers and/or baffles will be required on all construction equipment.

Construction activity within the existing right-of-way will be scheduled to minimize traffic inconvenience and safety hazards to motorists, pedestrians, and cyclists.

10-1.03 Order of Work

Order of work shall be in accordance with Section 5, "Control of Work," of the Standard Specifications and these Special Provisions.

Attention is directed to "Construction Area Signs & Traffic Control" of these Special Provisions.

10-1.04 Storm Water Pollution Prevention

Attention is directed to the provisions in Section 13, "Water Pollution Control," of the Standard Specifications and these Special Provisions.

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule his operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways, and other bodies of water. It shall consist of constructing those facilities which may be shown on the plans, specified herein or in the special provisions, or directed by the Town Engineer.

Before starting any work on the project, the Contractor shall submit, for acceptance by the Town Engineer, a program to control water pollution effectively during construction of the project. Such program shall show the schedule for the erosion control work included in the contract and for all water pollution control measures which the Contractor proposes to take in connection with construction of the project to minimize the effects of his operation upon adjacent streams and other bodies of water. The Contractor shall not perform any clearing and grubbing or earthwork on the project, other than that specifically authorized in writing by the Town Engineer, until such program has been accepted.

The Town Engineer will notify the Contractor of the acceptance or rejection of any submitted or revised water pollution control program not more than five (5) working days after its receipt by the Town Engineer.

10-1.05 Temporary Erosion Control

Temporary erosion control shall consist of, but not be limited to, constructing such facilities and taking such measures as are necessary to prevent, control and abate water, mud, and erosion damage to public and private property as a result of the construction of this project.

Conformance with the requirements of this section shall in no way relieve the Contractor from its responsibilities, as provided in Section 13, "Water Pollution Control," Section 5-1.36, "Property and Facility Preservation," and Section 5-1.39, "Damage Repair and Restoration," of the Standard Specifications.

Temporary erosion control features as are necessary to prevent damage during the winter season shall be constructed and functioning. The Contractor shall construct such supplementary temporary erosion control facilities as are necessary to protect adjacent private and public property.

Temporary erosion control measures shall conform to the current edition of the ABAG Manual of Standards for erosion and sediment control measures and includes, but not limited to the following:

1. The Contractor shall conduct its operations in such a manner that storm runoff will be contained within the project or channeled into the storm drain system which serves the runoff area. Storm runoff from one area shall not be allowed to divert to another runoff area.
2. The roadway shall be kept swept, and spoils from grinding, sawcutting, trenching, etc. and silt, shall be removed daily or as often as needed to prevent spoils and silt from entering the storm drain system and roadside ditches.

10-1.06 Maintaining Traffic and Pedestrian Operations

The site of the work shall be enclosed by suitable barricades, signs, and lights to warn and protect traffic effectively and shall be in accordance with those procedures as set by the Federal Highway Administration.

Attention is directed to Section 10-3, "Construction Area Signs & Traffic Control," of these Special Provisions.

The Contractor shall provide adequate barricades, signs, warning lights, watchmen and flagmen in accordance with the latest revision of the State of California "Manual for Warning Signs, Lights and Devices for Use in Performing Work Upon Highways" to protect the work and the safety of the public. Warning lights using inflammable liquids will not be permitted; only electrically operated lights will be approved for use. Warning lights shall be kept burning from sunset to sunrise, and barricades shall be painted to increase their visibility at night.

All traffic control shall be between 8:00 a.m. and 5:00 p.m.; unobstructed two-way traffic shall be maintained daily from 5:00 p.m. to 8:00 a.m.

Attention is directed to Section 7-1.03, "Public Convenience," and Section 7-1.04, "Public Safety," of the Standard Specifications, which sections are hereby incorporated in these Special Provisions as if set forth in full. Attention is also directed to Section 10-1.07, "Public Safety," of these Special Provisions.

Adequate traffic control, flagmen, signing, and barricades shall be provided by the Contractor at all times as approved by the Town Engineer.

10-1.07 Public Safety

The Contractor shall at all times conduct its work in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California, to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the work.

No access way shall be closed to the public without first obtaining permission of the Town Engineer.

Should the Contractor fail to provide public safety as specified or if, in the opinion of the Town Engineer, the warning devices furnished by the Contractor are not adequate, the Town may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations and the Contractor shall be liable to the Town for all costs incurred including, but not limited to, administrative costs.

Nothing in this section shall be construed to impose tort liability on the Town or the Town Engineer.

10-1.08 Water for Construction and Dust Control

Construction and testing water shall conform to Section 10-6, "Watering," of the Standard Specifications and these Special Provisions. The Contractor shall be responsible for providing all water necessary for construction and testing and disposing of all water needed for testing.

During the performance of the work called for under these Specifications, or any operations appurtenant thereto, the Contractor shall furnish all labor, equipment and means required, and as often as necessary, to prevent its operations from producing dust in amounts damaging to property or causing a nuisance to persons living nearby or occupying buildings in the vicinity.

10-1.09 Protection of Existing Facilities and Property

The Contractor shall notify Underground Service Alert (USA) for marking the locations of existing underground facilities.

The Contractor shall take all necessary measures to avoid injury to existing surface and underground utility facilities in and near the site of the work. No error or omission of utility markouts shall be construed to relieve the Contractor from its responsibility to protect all underground pipes, conduits, cables or other structures. The Contractor shall indemnify the Town and hold it harmless from any and all claims, demands, or liability made or asserted by any person or entity on account of or in connection with any damage to such surface or underground facilities caused by the Contractor or any of its agents or subcontractors.

The existing underground facilities in the area of work may include telephone, television and electrical cables, gas mains, water mains, sewer pipe and drainage pipe. The various utility companies shall be notified before trenching begins and at such other times as required to protect their facilities. Underground facilities shall be located and exposed ahead of trenching to prevent damage to the facilities, and to determine the depth and character of all facilities that cross or infringe on the trench prism. The Contractor shall immediately notify the Town Engineer of any facilities found. If damage should occur to the existing facilities, the utility company and the Town shall be notified immediately and repairs acceptable to the utility company shall be made at the Contractor's expense.

Attention is directed to the provisions in Section 5-1.36, "Property and Facility Preservation," of the Standard Specifications, which section is hereby incorporated in these special provisions as if set forth in full, and these Special Provisions.

Existing trees, shrubs, and other plants, that are not to be removed and are injured or damaged by reason of the Contractor's operations, shall be replaced by the Contractor in accordance with the requirements in Section 20-3.01C(4), "Replacement Plants," of the Standard Specifications. Section 20-3.01C(4) of the Standard Specifications is hereby incorporated in these Special Provisions.

10-1.10 Obstructions

Attention is directed to Sections 5-1.36C, "Nonhighway Facilities," and 15, "Existing Facilities," of the Standard Specifications, which sections are hereby incorporated in these Special Provisions as if set forth in full, and these Special Provisions.

Attention is directed to the existence of overhead and underground power, telephone, and television cable poles, underground sewer mains and laterals, underground gas mains, and underground water mains and laterals within the area in which construction is to be performed.

Prior to starting work, the Contractor shall (a minimum of 2 working days in advance) call Underground Service Alert (USA), toll free, at (800) 642-2444 and provide USA with all necessary data relative to the proposed work. USA will accept calls and process information to participating agencies who have underground facilities in the area between the hours of 7:30 a.m. and 5:00 p.m. daily, except Saturdays, Sundays, and holidays. Between the hours of 5:00 p.m. and 7:30 a.m. calls will be recorded and then processed after 7:30 a.m. For emergency situations, after hours and on Saturdays, Sundays and holidays, the Contractor shall contact the organization owning the affected facility. Upon notification, agencies having facilities in the area of the proposed excavation will mark their locations in the field using USA standard colors and codes to identify the facility.

Any delays claimed by the Contractor as a direct result of the utility facilities not being rearranged as provided will not be recognized nor will any delays be considered right-of-way delays within the meaning of Section 8-1.07, "Delays," of the Standard Specifications, except that any such delays will entitle the Contractor to an extension of time as provided in Section 8-1.10, "Liquidated Damages," of the Standard Specifications. The Contractor shall immediately notify the Town Engineer of such delays.

The Contractor will be required to work around public and private utility facilities and other improvements that are to remain in place within the construction area and it will be held liable to the owners of such facilities or interference with service resulting from his operations.

10-1.11 Hours of Work

The Contractor shall restrict its hours of work to 8:00 a.m. to 5:00 p.m. Monday through Friday. Deviations from these hours may be requested and approved in writing by the Town Engineer.

10-1.12 Dust Control

Dust control shall conform to the provisions in Sections 10-5 and 14-11.04 entitled “Dust Control” of the Standard Specifications, which section is hereby incorporated in these special provisions as if set forth in full, and these Special Provisions.

10-1.13 Preconstruction Conference

Prior to beginning any work, the Contractor shall provide the Town Engineer and affected agencies with a list of key and responsible personnel and how they may be reached at any time. A preconstruction conference shall be scheduled at least 72 hours prior to construction, at which time the Contractor shall be required to present his proposed work schedule, information of offsite yards, subcontractors, location of disposal and stockpile areas, and traffic control plans. All such schedules shall be subject to the approval of the Town Engineer and the applicable agencies.

10-1.14 Referenced Specifications and Standards

All contract work will be in accordance with the Marin County Uniform Construction Standards, all other terms of this contract including, but not limited to, these Special Provisions, and applicable law. Provisions of the State Standards and the Standard Specifications will only apply to and be a part of this contract to the extent such provisions are expressly incorporated in these Special Provisions.

10-1.15 Cleanup

Attention is directed to Section 4-1.13, “Cleanup,” of the Standard Specifications, which section is hereby incorporated in these Special Provision as if set forth in full.

Before final inspection of the work, the Contractor shall clean the construction site and all ground occupied by him in connection with the work, of all rubbish, excess material, falsework, temporary structures and equipment. All parts of the work shall be left in a neat and presentable condition.

Nothing herein shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Engineer.

10-1.16 Quality Control

Site Investigation and Control: The Contractor shall verify all dimensions in the field and shall check all field conditions continuously during construction. The Contractor shall be solely responsible for any inaccuracies built into the work.

Submittals: Submittals shall be submitted by the Contractor for review and approval by the Town prior to delivery to the job site.

Inspection of the Work:

The work shall be subject to inspection by representatives of the Town to assure strict compliance with the requirements of the Contract Documents.

The authorized representative of the Engineer on the project site shall be the Project Engineer acting directly and through various inspectors at the site. The presence of the Inspectors, however, shall not relieve the Contractor of the responsibility for the proper execution of the Work in accordance with all requirements of the Contract Documents. Compliance is distinctly a duty of the Contractor, and said duty shall not be avoided by any act or omission on the part of the inspector(s).

All materials and articles furnished by the Contractor shall be subject to rigid inspection and no material or articles shall be used in the Work until it has been inspected and accepted by the Engineer or the Town.

Testing and employment of a testing agency or laboratory shall not relieve the Contractor of the obligation to perform Work in accordance with requirement of Contract Documents.

Re-testing or re-inspection required because of non-conformance to specified requirements shall be performed by same independent firm on instructions by the Engineer. Payment for re-testing or re-inspection will be charged to the Contractor by deducting testing charges from the Contract Sum/Price.

Defective Materials to be Removed: All materials not conforming to the requirements of these Specifications shall be considered as defective; and all such materials, whether in place or not, shall be rejected and shall be removed immediately from the site of work at the Contractor's expense.

Quality Control Plan: The Contractor shall develop and submit a quality control procedure for the project. Approval of the quality control plan by the Engineer does not relieve the contractor of responsibility for quality control or work methods.

10-1.17 Payment

Full compensation for conforming to the provisions of this Section 10-1, "General," shall be considered as included in the contract price paid for various other items of work and no additional allowances shall be made therefore.

10-2 MOBILIZATION

10-2.01 Mobilization

Mobilization shall conform to the provisions in Section 9-1.16D, "Mobilization," of the Standard Specifications and to these Special Provisions.

Mobilization shall include the obtaining of all permits, moving onto the site of all equipment, temporary buildings, if needed, and other construction facilities as required for the proper performance and completion of the work.

Mobilization shall include but not be limited to the following principal items:

1. Signed Contract by the Town and the Contractor.
2. Completion of all tasks and submittal of all documents (bonds, insurance, schedule, etc.) required as conditions of issuing the Notice to Proceed.
3. Moving onto the site of all Contractor's equipment required for operations.
4. Installing temporary construction water supply, power, wiring and lighting facilities, as required.
5. Providing field office trailers if needed by the Contractor.
6. Providing all on-site communication facilities, including telephones and radio pagers.
7. Obtaining all required permits.
8. Having all OSHA required notices and establishment of safety programs.
9. Attendance at Pre-Construction Conference of Contractor's principal construction personnel.
10. Physical verification (potholing) of existing utilities.
11. Beginning work on the project or at the subject site as applicable.

10-2.02 Property Owner Notification

The Contractor shall furnish all property owners immediately adjacent to the work areas and businesses written notification that describes the proposed work and schedule within ten (10) business days of the Notice to Proceed. Within five (5) business days in advance of the start of work, the Contractor shall furnish affected property owners and businesses a second written notification.

The notices shall be in writing, placed on doors and shall indicate the Contractor's name and phone number, type of work, locations of work, day(s) and time when work will occur. Notice shall be reviewed and approved by the Engineer prior to being posted.

Parking restrictions shall be posted 48 hours in advance along the affected construction areas. See Section 10-3.05 , "Removal of On-Street Parking," of these Special Provisions.

10-2.03 Emergency Service Providers Notifications

The Contractor shall furnish the name and phone number of a representative that can be contacted in the event of an emergency. Said information shall be reported to the Town Police Department dispatcher, and updated as required to provide 24-hour phone access.

10-2.04 Measurement and Payment

Mobilization will be paid for at the contract **lump sum** price, which price shall include full compensation for furnishing all labor, materials, tools, and equipment, and doing all work involved in mobilization, as specified herein, and no additional allowance will be made therefor.

10-3 CONSTRUCTION AREA SIGNS & TRAFFIC CONTROL

10-3.01 Construction Area Signs

Construction area signs are required for the direction of public vehicle and pedestrian traffic through or around the work during construction.

Construction area signs shall be furnished, installed, maintained, and removed when no longer required in accordance with the provisions in Section 12, "Temporary Traffic Control," of the Standard Specifications and these Special Provisions. Sections 7-1.03, "Public Convenience," and 7-1.04, "Public Safety," of the Standard Specifications set forth the Contractor's responsibilities for public convenience and public safety are hereby incorporated in these Special Provisions as if set forth in full and are considered to be part of the contract requirements.

Construction area signs shall not be used until they are needed, and when no longer needed, they shall be removed from the site of the work.

10-3.02 Maintaining Traffic

Attention is directed to Section 7-1.03, "Public Convenience," Section 7-1.04, "Public Safety," and Section 12, "Temporary Traffic Control," of the Standard Specifications, which sections are hereby incorporated in these Special Provisions as if set forth in full. Nothing in these Special Provisions shall be construed as relieving the Contractor from his responsibilities as provided in said Section 7-1.04.

10-3.03 Flagging Costs

Section 12-1.04, "Payment," of the Standard Specifications is amended to read:

The cost of furnishing all flaggers, including transporting flaggers, to provide for passage of public traffic through the work under the provisions in Section 7-1.03, "Public Convenience," and Section 7-1.04, "Public Safety," of the Standard Specifications shall be considered as included in the contract lump sum price paid for traffic control and no additional allowance will be made therefor.

10-3.04 Traffic Control Plan

It is the responsibility of the Contractor to provide a Traffic Control Plan five (5) working days prior to beginning construction. Work shall not begin until the plan is approved by the Engineer.

The content of the Traffic Control Plan shall include, but not be limited to, the following:

- a. Show location and limits of the work zone.
- b. Give dimensions of lanes affected by traffic control that will be open to traffic.
- c. Indicate signing, cone placement, and other methods of delineation and reference to appropriate Town or Caltrans standard.
- d. Dimension location of signs and cone tapers.
- e. Identify side streets and driveways affected by construction and show how they will be handled.
- f. Show how pedestrian traffic will be handled through the construction site.
- g. Demonstrate how two-way traffic will be maintained.

No work except for the installation of project identification signage will be allowed to commence prior to approval of the work zone Traffic Control Plan.

10-3.05 Removal of On-Street Parking

Forty-eight (48) hours prior to construction, the Contractor shall place barricades signed “NO PARKING –TOW AWAY – Specific Time and Date(s)” at 100-foot intervals or a minimum of two (2) signs per block, whichever is greater, in the work area. “NO PARKING” signs must also state “C.V.C. 22651 (L)”. See example below.

<p style="text-align: center;">TOW AWAY NO PARKING</p> <p style="text-align: center;">THERE SHALL BE NO PARKING ON THIS STREET BETWEEN THE HOURS OF: _____ AND _____ ON _____</p> <p style="text-align: center;">VEHICLES FOUND IN VIOLATION WILL BE TOWED. C.V.C. 2265(L)</p>

“NO PARKING – TOW AWAY” signs shall be submitted for approval by the Engineer prior to their use. The Contractor shall notify the Engineer immediately after the “NO PARKING” signs are in place. “NO PARKING” signs and barricades shall be supplied by the Contractor.

Failure to comply with this section will prevent the Town from towing vehicles parked in the proposed work area. Any resulting delay will be the responsibility and at the expense of the Contractor.

“NO PARKING – TOW AWAY” signs will not be permitted to remain if no work occurs for five (5) business days. Signs must be removed completely from the site and will not be permitted to be placed until affected property owners and businesses are notified again.

10-3.06 Contractor Staging Area

Contractor shall not utilize public streets or parking spaces for overnight or weekend storage of vehicles, equipment, or materials unless approved by the Engineer.

10-3.07 Measurement and Payment

Traffic Control System will be paid for at the contract **lump sum** price, which price shall include full compensation for furnishing all labor (including flagging costs), materials (including signs), Maintaining Traffic, Traffic Control Plan, Construction Area Signs, Removal of On-Street Parking, tools, equipment, and incidentals and for doing all the work involved in placing, removing, storing, maintaining, and moving to new locations, replacing, and disposing of the components of the traffic control system as specified in the Standard Specifications and these Special Provisions, and as directed by the Engineer. The total cost of furnishing all flaggers will be borne solely by the Contractor.

10-4 EXISTING FACILITIES

10-4.01 Existing Facilities

The work performed in connection with various existing highway facilities shall conform to the provisions in Section 15, "Existing Facilities," of the Standard Specifications and these Special Provisions.

10-4.02 Removal of Miscellaneous Items

Various items shown on the Plans to be removed will be completely removed and disposed of.

No separate payment shall be made for the various items to be removed unless specified and listed in the Bid Schedule.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various contract items of work and no additional compensation will be allowed.

10-4.03 Sawcut Pavement

Where no joint exists in concrete or asphalt concrete to be removed and concrete or asphalt concrete to remain in place, the concrete or asphalt concrete shall be cut in neat lines to a minimum depth of 0.17 foot with a power-driven saw before the concrete or asphalt concrete is removed.

Full compensation for sawcutting shall be considered as included in the contract prices paid for the various contract items of work requiring sawcutting and no additional compensation will be allowed.

10-4.04 Adjust Manhole Frame and Cover to Grade

Existing manhole frames and covers, of the various types, shall be adjusted to the final pavement grade, complete and in place in accordance with the Plans and these Special Provisions.

The Contractor shall accurately locate and record the location of all manhole covers to be raised to grade and shall furnish the Town Engineer a copy of said record prior to resurfacing.

Waste materials generated while adjusting the manhole and utility frame and cover to grade shall be completely removed and disposed of in accordance with Section 5-1.20B(4), "Contractor-Property Owner Agreement," of the Standard Specifications.

Concrete used for collars shall conform to the provisions in Section 90-2, "Minor Concrete," of the Standard Specifications.

All sections of manhole frames and grade rings shall be set in Portland Cement Concrete the same day that the grade rings are placed. Contractor shall let the concrete collar cure for 24 hours prior to traffic loading. Asphalt concrete paving over Portland Cement Concrete shall be installed by the end of the following calendar day.

Adjust Manhole Frame and Cover to Grade will be measured per **each** from actual count.

Adjust Manhole Frame and Cover to Grade of the various types will be paid for at the contract price **each**, which price shall include full compensation for furnishing all labor, materials, tools and equipment, and doing all the work involved in adjusting manhole frame and cover to grade as herein specified, including, required excavation and backfill, additional grade rings if required, concrete collars, furnishing

location of existing boxes and covers to be adjusted to grade, removing silt and debris and no additional compensation will be allowed.

10-4.05 Adjust Water Valve Box Frame and Cover to Grade

Existing water valve frame and cover shall be adjusted to the final pavement grade, complete and in place in accordance with the Plans and these Special Provisions.

The Contractor shall accurately locate and record the location of all valve covers to be raised to grade and shall furnish the Town Engineer a copy of said record prior to resurfacing.

Waste materials generated while adjusting the water valve box frame and cover to grade shall be completely removed and disposed of in accordance with Section 5-1.20B(4), "Contractor-Property Owner Agreement," of the Standard Specifications.

Concrete used for collars shall conform to the provisions in Section 90-2, "Minor Concrete," of the Standard Specifications.

All sections of valve boxes shall be set in Portland Cement Concrete the same day that the grade rings are placed. Contractor shall let the concrete collar cure for 24 hours prior to traffic loading. Asphalt concrete paving over Portland Cement Concrete shall be installed by the end of the following calendar day.

Adjust Water Valve Box Frame and Cover to Grade will be measured per **each** from actual count.

Adjust Water Valve Box Frame and Cover to Grade will be paid for at the contract price **each**, which price shall include full compensation for furnishing all labor, materials, tools and equipment, and doing all the work involved in adjusting valve and cover to grade as herein specified, including, required excavation and backfill, concrete collars, furnishing location of existing boxes and covers to be adjusted to grade, removing silt and debris and no additional compensation will be allowed.

10-5 ROADWAY FACILITIES

10-5.01 Roadway Excavation

Roadway Excavation shall conform to the provisions of Section 19-2, "Roadway Excavation" of the Standard Specifications. Roadway excavation shall include all excavation, including asphalt and base removal as shown on the plans and as described in these Special Provisions

Roadway excavation shall consist of excavation of the roadway prism within the limits for road reconstruction and paving conform areas, as shown on the plans, and disposal of excess material, as specified herein.

Roadway excavation shall be performed by grinding. Rubber tired equipment is allowed on the subgrade unless unforeseen changed conditions occur during construction.

The Contractor shall note that there are trees near areas intended for roadway excavation. The Contractor's operation, including the size of the grinding equipment, shall be such, so as to insure that existing trees are not damaged. Where limited clearance under the trees prevents the use of a grinder, excavation shall be performed by an alternate method as approved by the Engineer. Alternate methods may include jack-hammering and removal of existing pavement and base materials by hand, or by use of smaller grinding equipment.

Subgrade shall be rolled by static steel drum roller unless otherwise directed by the engineer. Vibratory rollers shall not be used.

The Contractor shall furnish a grade setter to insure that the subgrade conforms to the lines and grades established by the Engineer.

Surplus materials from the excavation shall become the property of the Contractor and shall be disposed of by him, at their expense. The excavated roadway material shall be disposed of outside the right of way in accordance with Section 5-1.20B(4), "Contractor-Property Owner Agreement," of the Standard Specifications.

Excavation in excess of the planned or authorized cross section will not be paid for. The Contractor shall backfill and compact, as directed by the Engineer, unauthorized excavated areas at their expense.

10-5.02 Cold Plane Asphalt Concrete

Existing asphalt concrete pavement shall be removed at the locations and to the dimensions shown on the plan and disposed of as specified herein.

Pavement removal shall be performed with a pavement grinder. No other construction equipment will be allowed on the subgrade unless approved by the Engineer. Rubber tired equipment is allowed on the subgrade unless unforeseen changed conditions occur during construction. **Contractor shall exercise due caution when grinding or removing existing asphalt concrete around existing utility castings, or manholes. Following grinding of the asphalt concrete adjacent to castings or manholes, the contractor shall use hand working tools as necessary to remove any remaining asphalt concrete.**

The depth, width and shape of the cut shall be indicated on the typical cross-sections, details or as directed by the Engineer. The final cut shall result in a uniform surface conforming to the typical cross-sections and details. The outside lines of the planed area shall be neat and uniform. Planing asphalt concrete pavement operations shall be performed without damage to the surfacing to remain in place.

When transverse joints are made in the pavement at conform lines; no drop-off shall remain between the existing pavement and planed area when the pavement is opened to public traffic. If asphalt concrete has not been placed to the level of existing pavement before the pavement is to be opened public traffic, a temporary asphalt concrete taper shall be constructed. Asphalt concrete for temporary tapers shall be placed to the level of the existing pavement and tapers on a slope of 30:1, or flatter, to the level of the planed area.

The depth, width and shape of the cut shall be indicated on the typical cross-sections, details or as directed by the Engineer. The final cut shall result in a uniform surface conforming to the typical cross-sections and details. The outside lines of the planed area shall be neat and uniform. Planing asphalt concrete pavement operations shall be performed without damage to the surfacing to remain in place.

Asphalt concrete for temporary tapers shall be constructed of commercial quality asphalt concrete or cold mix asphalt concrete and may be spread and compacted by any method that will produce a smooth riding surface. Temporary asphalt concrete tapers shall be maintained continuously and when no longer needed completely removed, including the removal of all loose material from the underlying surface, before placing the permanent surfacing. Such removed material shall be disposed of in accordance with Section 5-1.20B(4), "Contractor-Property Owner Agreement," of the Standard Specifications.

The Contractor shall note that there are trees, shrubs and vegetation near areas intended for asphalt removal. The Contractor's operation, including the size of the grinding equipment, shall be such, so as to ensure that existing trees are not damaged. Where limited clearance under the trees prevents the use of a grinder, excavation shall be performed by an alternate method as approved by the Engineer. Alternate methods may include jack-hammering and removal of existing pavement and base materials by hand, or by use of smaller grinding equipment.

The material planed from the roadway surface, including material deposited in existing gutters or on the adjacent traveled way, shall be removed and disposed of outside the highway right-of-way in accordance with Section 5-1.20B(4), "Contractor-Property Owner Agreement," of the Standard Specifications. Removal operations of cold-planed material shall be concurrent with planning operations and follow within 50 feet of the planer, unless otherwise directed by the Engineer. The Contractor shall provide sediment control measures to prevent sediment from entering the storm drain system.

10-5.03 Asphalt Concrete

Asphalt concrete base and asphalt concrete surface and the placing thereof shall conform to the requirements of Section 39, "Hot Mix Asphalt," of the 2010 Standard Specifications with the following modifications:

Aggregate shall be Type A, ½" maximum.

Paving asphalt shall be PG64-10 conforming to Section 92, "Asphalts," of the 2010 Standard Specifications.

The Contractor shall furnish the Owner's Engineer, at least ten (10) working days prior to the start of work, a list of sources of materials together with a Certified of Compliance indicating that materials to be incorporated in the work fulfill the requirements of these specifications and a mix design for the asphalt concrete. The mix design shall be performed in accordance with CTM 366 and 367. The Certified of Compliance shall be signed by the material supplier or his representative. The Contractor shall be responsible for all costs associated with the required mix design.

A tack coat, type SS-1, shall be applied to all mating surfaces along lip of gutter and at conforms to existing pavement prior to placement of new asphalt concrete and shall conform to Section 94, "Asphaltic Emulsions" of the 2010 Standard Specifications.

Tack coat shall be applied between all asphalt concrete lifts.

Construction shall be in accordance with Section 39-2.01C(15)(b) "Method Construction Process" of the 2010 Standard Specifications. Asphalt concrete shall be compacted to 91-97% of maximum theoretical density (CT 309) as determined by CT 375 (a nuclear density device may be used). A profilograph will not be required.

A drop-off of more than 0.15-foot will not be allowed at any time between adjacent lanes open to public traffic. Attention is directed to Section entitled, "Maintaining Traffic" of these Special Provisions. Temporary asphalt concrete tapers or grinding of the existing pavement edge shall be used to provide a slope of 30:1, or flatter, between adjacent lanes open to traffic.

10-5.04 Measurement and Payment

Roadway Excavation shall be a final pay quantity (F) paid for at the contract price per **cubic yard**, which price shall include full compensation for all work as specified herein and no additional allowance will be made therefor.

Removal of existing bituminous pavement and base materials will be paid for as roadway excavation and no additional allowance made therefor.

Asphalt Concrete will be measured and paid for at the contract price **per ton** in place, which price shall include full compensation for furnishing all labor, materials, tools, and equipment, and doing all work involved in placing asphalt concrete, including but not limited to pavement preparation, tack coat, spreading and compacting, and no additional compensation will be allowed.

Section 9-1.07, "Payment Adjustments for Price Index Fluctuations," of the Standard Specifications shall not apply. No adjustments in payment will be made for fluctuations in the cost of asphaltic materials.

No separate measurement or payment will be made for **Cold Plane Asphalt Concrete**. Full compensation for Cold Plane Asphalt shall be considered as included in the prices paid for Roadway Excavation and no additional compensation will be allowed.

10-6 PAVEMENT MARKERS

10-6.01 Pavement Markers

Pavement markers shall conform to the requirements of Section 81-3, "Pavement Markers," of the Standard Specifications and these Special Provisions.

Blue Two-Way Retroreflective Pavement Markers shall be placed at centerline or as indicated on the plans at existing fire hydrant locations.

Hot melt bituminous adhesive shall be used to cement the markers to the pavement. Bituminous adhesive material shall conform to the following:

Specification	ASTM	Requirement
Flash Point, COC, °F	D 92	550 Min.
Softening Point, °F	D 36	200 Min.
Brookfield Thermosel Viscosity, Centipoise, No. 27 Spindle, 20 RPM, 400°F	D 4402	3,000-6,000
Penetration dmm, 100g, 55 seconds, 77°F	D 5	10 - 20
Filler Cement, percent by weight (Insoluble in 1,1,1 Trichloroethane)	D 2371	65 - 75

Filler material used in bituminous adhesive shall be Type PC, Grade III, calcium carbonate conforming to ASTM D1199, and shall conform to the following gradation:

Sieve Size	Percent Passing
No. 100	100
No. 200	95
No. 325	75

Bituminous adhesive shall be heated indirectly in an applicator with continuous agitation or recirculation. Bituminous adhesive shall not be heated above the maximum safe heating temperature recommended by the manufacturer and shall not be applied at temperatures greater than 425°F nor less than 375°F.

Immediately after application of the adhesive, pavement markers shall be placed in position and pressure applied until firm contact is made with the pavement.

Placement of pavement markers using bituminous adhesive shall conform to the requirements of the third, fourth, ninth and tenth paragraphs in said Section 81-3.03A of the Standard Specifications, except as follows:

- A. Markers shall not be placed when the pavement or air temperature is 50°F or less.
- B. Blast cleaning shall be required.

When bituminous adhesive is used for pavement marker placement, traffic control during placement operations shall conform to the requirements of "Construction Area Signs & Traffic Control" of these Special Provisions.

10-6.02 Measurement and Payment

Blue, Retroreflective Pavement Markers will be measured per **each** from actual count in place.

The estimated quantity of Pavement Markers is for bidding purposes only. This quantity may be increased, decreased or eliminated in its entirety based on field condition evaluation by the Engineer, and no adjustment in the contract bid price or other contract items will be made.

In the event of an increase or a decrease in the amount of the Engineer's Estimated quantity of Pavement Markers, such increase or decrease shall not be considered an alteration in excess of the 25 percent of the contract amount of such items under provisions of Section 4-1.05A of the Standard Specifications and no adjustment of the contract price for Pavement Markers will be made by reason of such increase or decrease.

Blue, Retroreflective Pavement Markers will be paid for at the contract price **each** from actual count in place, which shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the work involved, as herein specified, including:

- pavement markers,
- bituminous adhesive, and
- pavement surface preparation

and any other work required to install pavement markings not specifically enumerated in the plans or specifications, and no additional compensation will be allowed.

SECTION VIII - PROJECT PLANS
(Attached Separately)

EXHIBIT A

AGREEMENT GENERAL CONDITIONS

GC-1 INDEPENDENT CONTRACTOR

Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized, and financed to perform such work. Contractor shall act as an independent Contractor and not as the agent of the Town in performing the Agreement, maintaining complete control over its employees and all of its subContractors. Nothing contained in this Agreement or any subAgreement awarded by Contractor shall create any Agreementual relationship between any such subContractor and the Town. Contractor shall perform all work in accordance with its own methods subject to compliance with the Agreement.

GC-2 LAWS

This Agreement shall be in accordance with the laws of the state of CALIFORNIA. Parties further stipulate that this Agreement was entered into in the state of CALIFORNIA and the state of CALIFORNIA is the only appropriate forum for any litigation as a result of breach hereof or any questions risen herefrom.

Contractor shall keep itself fully informed of, and shall observe and comply with, all laws, ordinances, and regulations which in any manner affect those engaged or employed on any work, or the materials and equipment used in any work, or in any way affect the performance of any work, and of all orders and decrees of agencies having any jurisdiction or authority over work performed under the Agreement.

If any discrepancy or inconsistency should be discovered between the Agreement and any such law, ordinance, regulation, order, or decree, Contractor shall immediately report the same in writing to the Town. Contractor shall be responsible for the compliance by subcontractors of all tiers with the above provisions of this article.

- A. Special attention is directed to Part 7, Chapter 1, Article 2, Sections 1770 et. seq. of the Labor Code of the State of California.
- B. Labor Discrimination: Attention is directed to Section 1735 of the Labor Code, which reads as follows:

No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every Contractor for public works violating this Section is subject to all the penalties imposed for violation of this Chapter.

- C. Contractor shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations; and lawful orders of all authorities having jurisdiction for the safety of persons and protection of property.
- D. Contractor shall comply with Sections 12101 through 12901 of Title 22, California Administrative Code. Contractor shall warn all persons at the work site of their exposure to chemicals known to the state to cause cancer or birth defects or other reproductive harm. Contractor shall be responsible for compliance by its subcontractors with this Article.
- E. Contractor stipulates and agrees that pursuant to the provisions of Labor Code, Sections 1810 through 1815, eight (8) hours labor shall constitute a legal day's work, and no

worker shall be required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week, except as provided for under Section 1815. Nothing in this provision shall be construed to relate to wage determination or in any way affect Agreemental provisions related to compensation.

Notwithstanding the Labor Code provisions set forth above, pursuant to Labor Code, Section 1815, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted provided that compensation shall be made for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

- F. Contractor shall be allowed to substitute securities for any monies withheld to ensure performance under this Agreement pursuant to Section 22300 of the California Public Agreements Code.
- G. Contractor shall be licensed under the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California to do the type of work contemplated in the Project and shall be skilled and regularly engaged in the general class or type of work called for under the Agreement.

GC-3 PERMITS AND TAXES

Contractor shall, unless otherwise provided elsewhere in the Agreement, at its expense, obtain all permits and licenses and pay all charges and fees necessary for the

performance of the Agreement, and shall give all public notices necessary for the lawful performance of the Agreement.

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under the Agreement, shall make any and all payroll deductions required by law, and shall indemnify and hold harmless the Town from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

GC-4 INDEMNITY

Contractor shall indemnify, defend, and hold harmless the Town and all its officers, agents, servants, employees and any other Town representatives, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, consequential damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature whether arising before or after final acceptance of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to or claimed to be caused, occasioned, or contributed to in whole or in part by reason of any act, omission, fault, or negligence whether active or passive of Contractor, or of anyone acting under its direction, control, or on its behalf including subcontractors in connection with or incident to the performance of this Agreement without limiting the generality of the foregoing, the same shall include injury to or death of any person or persons and damage to any property, regardless of where located, including without limitation the property of the Town, Contractor's employees, and all other persons. Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the active negligence or willful misconduct of the Town or its officers, agents, servants, employees, or any other Town's representative.

Contractor shall include in each agreement with each of its subcontractors at all tiers, a provision requiring that the subcontractor indemnify the Town as stated in this Article.

GC-5 SUBAGREEMENTS

No subcontract shall be entered into and Contractor shall not substitute any person as subcontractor in place of a subcontractor so listed in the Agreement provided that the Town, at its discretion, may consent to a subcontractor substitution. No subcontracts at any tier shall relieve Contractor of any of its liabilities or obligations under the Agreement, and Contractor agrees that it is fully responsible to the Town for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them in the performance of the Agreement.

Nothing contained in the Agreement shall create any contractual relationship between

any subcontractor and the Town.

GC-6 TERMINATION

The Town may, at its option, cancel and terminate the Agreement in whole or in part at any time by written notice thereof to Contractor, whether or not Contractor is in default. Upon any such cancellation and termination, Contractor shall waive any claims for damages, including loss of anticipated profits, on account thereof, but as the sole right and remedy of Contractor and the Town, the Town shall pay Contractor all amounts due and not previously paid to Contractor for work completed in accordance with the Agreement prior to such notice, and for work thereafter completed as specified in such notice.

Said termination shall be without prejudice to any other remedies available to the Town.

GC-7 SAFETY

In accordance with generally accepted construction practices and state law, Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. Contractor shall, at all times, keep the premises occupied by it and access to such premises in a neat, clean, and safe condition. This requirement shall apply continuously and not be limited to normal working hours.

All work and materials shall be in strict accordance with all applicable state, Town, county, and federal rules, regulations, and codes, and attention is drawn to the requirements of OSHA.

Contractor is hereby informed that work on this Project could be hazardous. Contractor shall carefully instruct all personnel working in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

GC-8 WARRANTY

Contractor warrants that the work performed pursuant to the Agreement shall be of the quality specified or of the highest quality if no quality is specified, and shall conform to the specifications, drawings, samples, and other descriptions set forth in the Agreement. Contractor warrants all equipment and materials furnished by it and all work performed

by it under the Agreement against defective design (unless furnished by the Town), materials, and workmanship for a period of one (1) year from and after final acceptance regardless of whether the same were furnished or performed by Contractor or by any of its subcontractors or suppliers of any tier.

GC-9 SUBMITTALS

Contractor shall submit within the time specified at its own expense all shop drawings and supporting data, catalogs, and schedules, and these shall be submitted as the instruments of Contractor, who shall be responsible for their accuracy and completeness. These submittals may be prepared by Contractor, subcontractors, or suppliers, but Contractor shall ascertain that submittals meet all of the requirements of the Agreement while conforming to structural, space, and access conditions at the point of installation. Contractor shall check all submittals before submitting them to the Town.

GC-10 LIENS

If at any time any notices of lien are filed for labor performed or materials or equipment manufactured, furnished, or delivered to or for the work, Contractor shall at its own cost and expense, promptly discharge, remove, or otherwise dispose of the same, and until such discharge, removal, or disposition, the Town shall have the right to retain from any monies payable to Contractor an amount which, in the Town's sole judgment, it deems necessary to satisfy such liens and pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce the same, or incurred in connection therewith or by reason thereof.

GC-11 INSURANCE

A. Contractor shall, at its expense, procure and maintain insurance in insurance companies with a Best's Insurance Rating of A:VII or better on all of its operations under this Agreement for the duration of the work and the warranty period as follows:

1. Workers' Compensation and Employers Liability Insurance. Workers' Compensation Insurance shall be provided as required by any applicable law or regulation. Employers Liability Insurance shall be provided in amounts not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 policy limit for bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease.

The insurer shall waive all rights of subrogation against the Town, its officers,

directors, and employees.

If there is any risk of injury to Contractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under other laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

2. General Liability Insurance. Contractor shall carry general liability insurance in any combination of primary, excess or umbrella insurance, covering all operations by or on behalf of Contractor for the limits of liability not less than \$1,000,000 per occurrence. If the policy has a general aggregate limit, the aggregate limit shall apply separately to this project.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001. Contractor's coverage shall be "occurrence" coverage and not "claims made" coverage. Coverage shall include, or be endorsed to include, coverage for personal injury liability assumed under Agreement. The policy shall also include liability arising out of the use and operation of any Town-furnished equipment by Contractor, its personnel and others.

The Town, its officers, directors and employees shall be named as additional insureds on Contractor's policy by a policy provision or endorsement providing coverage at least as broad as Insurance Services Office "Additional Insured - Owners, Lessees or Contractors (Form B) endorsement Number CG 2010."

The required additional insured coverages for the Town, its officers, directors, and employees shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance or self-insurance maintained by the Town shall be excess only and shall not be called upon to contribute with Contractor's insurance.

3. Automobile Liability Insurance. Contractor shall carry Automobile Liability Insurance in any combination of primary, excess or umbrella insurance, provided the coverage is at least as broad as the liability coverage of Insurance Services Office Business Automobile Liability, Symbol #1 "any auto" (form number CA 0001), in an amount not less than \$1,000,000 per occurrence. The policy shall also include liability arising out of the use and operation of Town-furnished vehicles by Contractor, its personnel and others.

The Town, its officers, directors and employees shall be named as additional insureds on Contractor's policy by a policy provision or endorsement providing

coverage at least as broad as Insurance Services Office "Additional Insured - Owners, Lessees or Contractors (Form B) endorsement Number CG 2010."

The required additional insured coverages for the Town, its officers, directors, and employees shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance or self-insurance maintained by the Town shall be excess only and shall not be called upon to contribute with Contractor's insurance.

B. The following provisions shall also apply:

1. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice has been given to the Town.
2. Contractor shall furnish the Town with original, signed certificates and original, signed amendatory endorsements effecting coverage required by this clause, and all such certificates and endorsements are to be received and reviewed by the Town before any work is commenced hereunder by Contractor. The certificates and amendatory endorsements shall be signed by an individual who is authorized to bind the insurer.
3. Amendatory endorsements to be furnished to the Town include:
 - a. The policy provision or the additional insured endorsement adding the Town, its officers, directors, and employees. If coverage for the Town is written as a separate Owners and Contractors Protective Liability policy, the complete, original policy shall be provided.
 - b. The policy provision stating that such insurance applies as primary insurance and will not call upon other insurance or self-insurance maintained by the Town for contribution.
 - c. Thirty (30)-day cancellation notice to the Town.
4. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.
5. All insurance correspondence, notices, certificates, and endorsements from the insurance carriers shall each separately reference "All Town Operations" or "All Town Projects."

6. In the event Contractor fails to comply with this Section, the Town may take such action as the Town deems necessary to protect the Town's interest. Such action may include but is not limited to termination of the Agreement, withholding of payments, or other actions as the Town deems appropriate.

GC-12 PAYMENTS

Contractor will be paid within thirty (30) calendar days after the Town receives the invoice(s) and all required supporting documentation. Payment will be made by the Town provided that the work is satisfactory and accepted by the Town and that the Agreement is free of all liens and encumbrances.

**** If \$5,000 or more, include the following two paragraphs**

The Town will retain five percent (5%) of the invoiced work done as part security for the fulfillment of the Agreement by Contractor. At any time after fifty percent (50%) of the value of the total work has been exceeded, and if the Town finds that satisfactory progress is being made and so recommends, the Town may reduce the total amount to be retained from payments. However, at no time shall such retention be established at less than five percent (5%) of the total estimated value of said work and materials. Any reduction in retention is discretionary and may at any time be again increased to the maximum limits otherwise specified.

GC-13 COOPERATION WITH OTHERS

The Town, other Contractors, and other subcontractors may be working at the site during the performance of this Agreement, and Contractor's work may be interfered with as a result of such concurrent activities. The Town reserves the right to require Contractor to schedule the order of performance of its work in such manner as will minimize interference with the work of any of the parties involved, at no extra cost to the Town.

Contractor may elect to have funds that the Town would otherwise withhold from progress payments deposited in an escrow account in accordance with Section 22300 of the California Public Agreements Code. Contractor shall make a written request to the Town.