

**CITY OF COLTON**  
**NOTICE INVITING BIDS**

The City of Colton, Public Works Department ("City") will receive sealed bids for the **AGUA MANSA ROAD - RANCHO AVENUE TRAFFIC SIGNAL PROJECT** at the office of the CITY CLERK (located at 650 North La Cadena Drive, Colton, California, 92324), no later than *October 02, 2008, 3:00 P.M., Thursday*, at which time or thereafter said bids will be opened and read aloud. Bids received after this time will be returned unopened. Bids shall be valid for 60 calendar days after the bid opening date.

Bids must be submitted on the City's Bid Forms. Bids must be prepared on the approved Bid forms and in the manner prescribed in the Instructions to Bidders. Bids must be submitted in a sealed envelope which is plainly marked on the outside with the following: "**ATTN.: SEALED BID FOR AGUA MANSA ROAD - RANCHO AVENUE TRAFFIC SIGNAL PROJECT. DO NOT OPEN WITH REGULAR MAIL.**"

**WORK: The Works consists of, but not limited to the Installation of Traffic signal lights, striping modification, construction of ADA ramp, sidewalk, curb & gutter and all necessary work shown on the Plan 6136.**

Bidders may obtain a copy of the Contract Documents at OCB Reprographics beginning Monday, September 02, 2008. The location can be found at [www.ocbinc.com](http://www.ocbinc.com) or phone 909-381-6535. There is a non-refundable fee for the cost of the plans. Contact OCB, Inc for the required fee. The documents can also be reviewed at McGraw Hill Plan rooms.

Bids must be accompanied by cash, a certified or cashier's check, or a Bid Bond in favor of the City in an amount not less than ten percent (10%) of the submitted Total Bid Price.

A non-mandatory Pre-Bid Conference will be held at Corporate Yard Conference Room, 160 S. 10<sup>th</sup> Street, Colton, CA 92324 on the following date(s) and time(s): *September 16, 2008, Tuesday, at 9:00 A.M.* Prospective bidders may visit the Project Site without making arrangements through the **AGUA MANSA ROAD - RANCHO AVENUE TRAFFIC SIGNAL PROJECT**. Bids will be accepted from any bidder who did not attend the Pre-Bid Conference.

Each bid shall be accompanied by the security referred to in the Contract Documents, the non-collusion affidavit, the list of proposed subcontractors, and all additional documentation required by the Instructions to Bidders.

The successful bidder will be required to furnish the City with a Performance Bond equal to 100% of the successful bid, and a Payment (Labor and Materials) Bond equal to 100% of the successful bid, prior to execution of the Contract. All bonds are to be secured from a surety that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure Section 995.120, and is admitted by the State of California.

Pursuant to Public Contract Code Section 22300, the successful bidder may substitute certain securities for funds withheld by City to ensure his performance under the Contract.

**NOTICE INVITING BIDS**

The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract which will be awarded to the successful bidder, copies of which are on file and will be made available to any interested party upon request at Public Works Department of City of Colton or online at <http://www.dir.ca.gov/dlsr>. A copy of these rates shall be posted by the successful bidder at the job site. The successful bidder and all subcontractor(s) under him, shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Contract, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors. If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall comply with the higher of the state or federal prevailing wage rates.

Each bidder shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following appropriate classification(s) of contractor's license(s), for the work bid upon, and must maintain the license(s) throughout the duration of the Contract: Bidders shall possess the following California Contractor's license in order to perform the Work of this Project: *Class "A"* or a letter from **Contractor's Licensing Board** outlining the combination of various licenses necessary to perform all the work at the time the bid is submitted to the City.

Pursuant to Public Contract Code Section 3400(b), if the City has made any findings designating certain materials, products, things, or services by specific brand or trade name, such findings and the materials, products, things, or services and their specific brand or trade names will be set forth in the Special Conditions.

Award of Contract: The City shall award the Contract for the Project to the lowest responsive, responsible bidder as determined from the base bid alone by the City. The City reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process.

For further information contact the following persons;

Victor Ortiz, Public Works Department @ (909) 370-5065, or by FAX @ (909) 370-5072, or by E-mail [vortiz@ci.colton.ca.us](mailto:vortiz@ci.colton.ca.us)

Reggie Torres, Public Works Department @ (909) 370-5065, or by FAX @ (909) 370-5072, or by E-mail [rtorres@ci.colton.ca.us](mailto:rtorres@ci.colton.ca.us)

## NOTICE INVITING BIDS

## CONTRACT

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_, in the County of San Bernardino, State of California, by and between the City of Colton, hereinafter called City, and \_\_\_\_\_, hereinafter called Contractor. The City and the Contractor for the considerations stated herein agree as follows:

**ARTICLE 1. SCOPE OF WORK.** The Contractor shall perform all Work within the time stipulated the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

### AGUA MANSA ROAD / RANCHO AVENUE TRAFFIC SIGNAL PROJECT IN THE CITY COLTON

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

**ARTICLE 2. TIME FOR COMPLETION.** The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **Ninety (90)** calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

**ARTICLE 3. CONTRACT PRICE.** The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Payment shall be made as set forth in the General Conditions.

**ARTICLE 4. LIQUIDATED DAMAGES.** In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **\$500.00** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

**ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.** The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Contractor's Bid Forms
- Contractor's Certificate Regarding Workers' Compensation
- Bid Bond

CONTRACT

Designation of Subcontractors  
Information Required of Bidders  
Non-Collusion Affidavit form  
Contract  
Performance Bond  
Payment (Labor and Materials) Bond  
General Conditions  
Special Provisions (or Special Conditions)  
Technical Specifications  
Greenbook Standard Specifications (Sections 1-9 Excluded)  
Addenda  
Plans and Contract Drawings  
Approved and fully executed change orders  
Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

**ARTICLE 6. PROVISIONS REQUIRED BY LAW.** Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Project.

**ARTICLE 7. INDEMNIFICATION.** Contractor shall provide indemnification as set forth in the General Conditions.

**ARTICLE 8. PREVAILING WAGES.** Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at Public Works Department or may be obtained online at <http://www.dir.ca.gov/dlsr>. and which must be posted at the job site. If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall comply with the higher of the state or federal prevailing wage rates.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

**CITY OF COLTON**

**By:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**Attest:**

\_\_\_\_\_  
City Clerk

**Recommended By:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**[NAME OF CONTRACTOR]**

**By:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
License Number

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, \_\_\_\_\_ (hereinafter referred to as "City") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of \_\_\_\_\_ DOLLARS, (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or 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 agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, 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 City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations

**PERFORMANCE BOND**

under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the CITY, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way 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 the Contract Documents or to the Project.

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**PERFORMANCE BOND**

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
CONTRACTOR/PRINCIPAL

\_\_\_\_\_  
Name

By \_\_\_\_\_

SURETY:

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

Attorney-In-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$ \_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California)

\_\_\_\_\_

**PERFORMANCE BOND**

STATE OF CALIFORNIA )  
 ) ss.  
CITY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2008, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the within instrument as the Attorney-In-Fact of the (Surety) acknowledged to me that he subscribed the name of the \_\_\_\_\_ (Surety) thereto and his own name as Attorney-In-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

Commission expires: \_\_\_\_\_

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

**PERFORMANCE BOND**

**PAYMENT BOND (LABOR AND MATERIALS)**

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Colton (hereinafter designated as the "City"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_ has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the work described as follows:

\_\_\_\_\_  
(the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies 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, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the City in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the Civil Code, fail to pay for any materials, provisions or other supplies, 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 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the 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.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining

**PAYMENT (LABOR AND MATERIALS) BOND**

or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed unoriginal thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed b its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal,  
if corporation)

\_\_\_\_\_  
Principal (Property Name of Contractor)

By \_\_\_\_\_  
(Signature of Contractor)

(Seal of Surety)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney in Fact

(Attached Attorney-In-Fact  
Certificate and Required  
Acknowledgements)

\*Note: Appropriate Notarial Acknowledgments of Execution by Contractor and +surety and a power of Attorney MUST BE ATTACHED.

**PAYMENT (LABOR AND MATERIALS) BOND**

## GENERAL CONDITIONS

### ARTICLE 1. DEFINITIONS

- a. Acceptable, Acceptance or words of similar import shall be understood to be the acceptance of the Engineer and/or the City .
- b. Act of God an Act of God is an earthquake of magnitude 3.5 on the Richter scale and tidal waves.
- c. Approval means written authorization by Engineer and/or City .
- d. Contract Documents includes all documents as stated in the Contract.
- e. City and Contractor are those stated in the Contract. The terms City and Owner may be used interchangeably.
- f. Day shall mean calendar day unless otherwise specifically designated.
- g. Engineer shall mean the General Manager, or his or her designee, of the Department of Public Works for the City of Colton, acting either directly or through properly authorized agents, such as agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the “City’s Representative” or “Representative” in the Contract Documents.
- h. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and similar words shall mean the written approval, selection, satisfaction, direction, or similar action of the Engineer and/or City.
- i. Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of the Engineer and/or City is intended, unless stated otherwise.
- j. Install means the complete installation of any item, equipment or material.
- k. Material shall include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new unless specified otherwise.
- l. Perform shall mean that the Contractor, at Contractor’s expense, shall take all actions necessary to complete The Work, including furnishing of necessary labor, tools, and equipment, and providing and installing Materials that are indicated, specified, or required to complete such performance.
- m. Project is The Work planned by City as provided in the Contract Documents.

## GENERAL CONDITIONS

- n. Provide shall include provide complete in place, that is furnish, install, test and make ready for use.
- o. Recyclable Waste Materials shall mean materials removed from the Project site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- p. Specifications means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work. Except for Sections 1-9 of the Standard Specifications for Public Works Construction (“Greenbook”), 2003 Edition which are specifically excluded from incorporation into these Contract Documents, the Work shall be done in accordance with the Greenbook, including all current supplements, addenda, and revisions thereof. In the case of conflict between the Greenbook and the Contract Documents, the Contract Documents shall prevail.
- q. The Work means the entire improvement planned by the City pursuant to the Contract Documents.
- r. Work means labor, equipment and materials incorporated in, or to be incorporated in the construction covered by the Contract Documents.

## ARTICLE 2. CONTRACT DOCUMENTS

- a. **Contract Documents.** The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.
- b. **Interpretations.** The Contract Documents are intended to be fully cooperative and to be complementary. If Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
  1. Change Orders or Work Change Directives
  2. Addenda
  3. Special Provisions (or Special Conditions)
  4. Technical Specifications
  5. Plans (Contract Drawings)
  6. Contract
  7. General Conditions
  8. Instructions to Bidders
  9. Notice Inviting Bids
  10. Contractor’s Bid Forms
  11. Greenbook Standard Specifications (Sections 1-9 Excluded)
  12. Standard Plans
  13. Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

## GENERAL CONDITIONS

1. Figures govern over scaled dimensions
  2. Detail drawings govern over general drawings
  3. Addenda or Change Order drawings govern over Contract Drawings
  4. Contract Drawings govern over Standard Drawings
  5. Contract Drawings govern over Shop Drawings
- c. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard shall always apply.
- d. **Organization of Contract Documents.** Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing The Work among subcontractors or in establishing the extent of Work to be performed by any trade.

### **ARTICLE 3. CONTRACTS DOCUMENTS: COPIES & MAINTENANCE**

Contractor will be furnished, free of charge, **five (5)** copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents at the Project site.

### **ARTICLE 4. DETAIL DRAWINGS AND INSTRUCTIONS**

- a. **Examination of Contract Documents.** Before commencing any portion of The Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.
- b. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- c. **Quality of Parts, Construction and Finish.** All parts of The Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with The Work without obtaining first from the Engineer such Approval may be necessary for the proper performance of Work.
- d. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the

### **GENERAL CONDITIONS**

Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

#### **ARTICLE 5. EXISTENCE OF UTILITIES AT THE WORK SITE**

- a. The City has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.
- b. No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the City in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- c. All water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of The Work.
- d. Notwithstanding the above, pursuant to Section 4215 of the Government Code, the City has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for bids, City shall assume the responsibility for their timely removal, relocation, or protection.
- e. Contractor, except in an emergency, shall contact the appropriate regional notification center, Southern California Underground Service Alert at 1-800-227-2600 at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the City, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the City has been given the identification number by the Contractor.

#### **ARTICLE 6. SCHEDULE**

- a. **Estimated Schedule.** Within fourteen (14) days after the issuance of the Notice to Proceed, Contractor shall prepare a Project schedule and shall submit this to the Engineer for Approval. The receipt or Approval of any schedules by the Engineer or the City shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and

#### **GENERAL CONDITIONS**

resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Engineer.

- b. **Schedule Contents.** The schedule shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. Schedule duration shall match the Contract time. Schedules indicating early completion will be rejected.
- c. **Schedule Updates.** Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the Engineer whenever requested to do so by Engineer and with each progress payment request. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

#### **ARTICLE 7. SUBSTITUTIONS**

- a. Pursuant to Public Contract Code Section 3400(b) the City may make a finding that is described in the invitation for bids that designates certain products, things, or services by specific brand or trade name.
- b. Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However, the City may have adopted certain uniform standards for certain materials, processes and articles.
- c. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with the Contractor. The City has the complete and sole discretion to determine if a

#### **GENERAL CONDITIONS**

material, process or article is an “or equal” material, process or article that may be substituted.

- d. Data required to substantiate requests for substitutions of an “or equal” material, process or article data shall include a signed affidavit from the Contractor stating that, and describing how, the substituted “or equal” material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted “or equal” material, process or article, and substantiates that it is an “or equal” to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or equal” material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.
- e. The Contractor shall bear all of the City’s costs associated with the review of substitution requests.
- f. The Contractor shall be responsible for all costs related to a substituted “or equal” material, process or article.
- g. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

#### **ARTICLE 8. SHOP DRAWINGS**

- a. Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in his own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop or setting drawings, calculations, schedules, and materials list, and all other provisions required by the Contract. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Engineer. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- b. Contractor shall make any corrections required by the Engineer, and file with the Engineer six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. Engineer’s approval of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called Engineer’s attention to such deviations at time of submission and has secured the Engineer’s written Approval. Engineer’s Approval of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

#### **GENERAL CONDITIONS**

## **ARTICLE 9. SUBMITTALS**

- a. Contractor shall furnish to the Engineer for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the specifications. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.
- b. Contractor will provide samples and submittals, together with catalogs and supporting data required by the Engineer, to the Engineer within a reasonable time period to provide for adequate review and avoid delays in the Work.
- c. These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

## **ARTICLE 10. MATERIALS**

- a. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- b. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of The Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- d. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the Project, to the City free from any claims, liens, or charges.
- e. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the City or any independent contractor.

## **ARTICLE 11. CONTRACTOR'S SUPERVISION**

Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent approved by the City. Superintendent must be able to proficiently speak, read and write in English. Contractor shall continuously provide efficient supervision of the Project.

## **GENERAL CONDITIONS**

## **ARTICLE 12. WORKERS**

- a. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- b. Any person in the employ of the Contractor whom the City may deem incompetent or unfit shall be dismissed from The Work and shall not be employed on this Project except with the written Approval of the City.

## **ARTICLE 13. SUBCONTRACTORS**

- a. Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of The Work. Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the City.
- b. The City reserves the right to Approve all subcontractors. The City's Approval of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.
- c. Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

## **ARTICLE 14. PERMITS AND LICENSES**

Permits and licenses necessary for prosecution of The Work shall be secured and paid for by Contractor, unless otherwise specified in the Contract Documents.

- a. Contractor shall obtain and pay for all other permits and licenses required for The Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the City.
- b. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the City's responsibility pursuant to the Contract Documents.
- c. Before Acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the City.

## **GENERAL CONDITIONS**

## ARTICLE 15. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall Provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on The Work where the utility is needed. Upon completion of The Work, Contractor shall remove all temporary distribution systems.
- b. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project.
- c. All permanent meters Installed shall be listed in the Contractor's name until Project Acceptance.
- d. If the Contract is for construction in existing facilities, Contractor may, with prior written Approval of the City, use the City's existing utilities by compensating the City for utilities used by Contractor.

## ARTICLE 16. INSPECTION FEES FOR PERMANENT UTILITIES

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by the City. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by the City. Contractor may either request reimbursement from the City for such fees, or shall be responsible for arranging and coordination with City for the payment of such fees.

## ARTICLE 17. TRENCHES

- a. Trenches Five Feet or More in Depth. The Contractor shall submit to the City, 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 any trench or trenches five feet or more in depth. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.
- b. Excavations Deeper than Four Feet. If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:
  - 1) 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.

## GENERAL CONDITIONS

- 2) Subsurface or latent physical conditions at the site differing from those indicated.
- 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

The City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of The Work, shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the City 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. 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 parties.

#### **ARTICLE 18. DIVERSION OF RECYCLABLE WASTE MATERIALS**

In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

#### **ARTICLE 19. REMOVAL OF HAZARDOUS MATERIALS**

Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials which have not been rendered harmless at the Project site, the Contractor shall immediately stop work at the affected Project site and shall report the condition to the City in writing. The City shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor.

#### **ARTICLE 20. SANITARY FACILITIES**

Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet

### **GENERAL CONDITIONS**

facilities in The Work under construction shall not be permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of the Contractor.

#### **ARTICLE 21. AIR POLLUTION CONTROL**

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

#### **ARTICLE 22. COMPLIANCE WITH STATE STORM WATER PERMIT**

- a. Contractor shall be required to comply with all conditions of the State Water Resources Control Board (“State Water Board”) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (“Permit”) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (“SWPPP”) prior to initiating Work. In bidding on this Contract, it shall be Contractor’s responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
- b. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the Engineer.
- c. Contractor shall comply with the lawful requirements of any applicable municipality, the City, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- d. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
- e. Failure to comply with the Permit is in violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its

#### **GENERAL CONDITIONS**

officials, officers, agents, employees or authorized volunteers. City may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.

#### **ARTICLE 23. CLEANING UP**

- a. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. Upon completion of Work, Contractor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Contractor shall also clean all buildings, asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment.
- b. Contractor shall fully clean up the site at the completion of The Work. If the Contractor fails to immediately clean up at the completion of The Work, the City may do so and the cost of such clean up shall be charged back to the Contractor.

#### **ARTICLE 24. LAYOUT AND FIELD ENGINEERING**

All field engineering required for laying out The Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Layout shall be done by a registered civil engineer Approved by the Engineer. Any required "as-built" drawings of the Work shall be prepared by the registered civil engineer.

#### **ARTICLE 25. EXCESSIVE NOISE**

- a. The Contractor shall use only such equipment on the work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- b. The Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

### **GENERAL CONDITIONS**

## **ARTICLE 26. TESTS AND INSPECTIONS**

- a. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority require any part of The Work to be tested or Approved, Contractor shall provide the Engineer at least two (2) working days notice of its readiness for observation or inspection. If inspection is by a public authority other than the City, Contractor shall promptly inform the City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and City inspection shall be paid by the City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
- b. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- c. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the City, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- d. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the City so that the City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into The Work.
- e. If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
- f. Reexamination of Work may be ordered by the City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

## **ARTICLE 27. PROTECTION OF WORK AND PROPERTY**

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of The Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the City. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions

### **GENERAL CONDITIONS**

and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

- b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the Engineer or the City. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the City and the Contractor.
- c. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- d. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by The Work operations. Contractor shall:
  - 1) Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
  - 2) Provide substantial barricades around any shrubs or trees indicated to be preserved.
  - 3) Deliver materials to the Project site over a route designated by the Engineer.
  - 4) Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, the City shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.
  - 5) Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Engineer. Contractor shall not unreasonably encumber the Project site with its materials.
  - 6) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, at no cost to the City.
  - 7) Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the City.
  - 8) Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.

## GENERAL CONDITIONS

- 9) At the completion of work each day, leave the Project site in a clean, safe condition.
- 10) Comply with any stage construction and traffic handling plans. Access to residences and businesses shall be maintained at all times.

These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

- e. Should damage to persons or property occur as a result of The Work, Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The City shall be entitled to inspect and copy any such documentation, video, or photographs.

#### **ARTICLE 28. CONTRACTORS MEANS AND METHODS**

Contractor is solely responsible for the means and methods utilized to Perform The Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

#### **ARTICLE 29. INSPECTOR'S FIELD OFFICE**

- a. The Contractor shall be responsible for providing the inspector's field office. The Office shall be a substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock clasp. The office shall have heating and air conditioning and shall be equipped with a telephone, a telephone answering machine, and a fax machine at Contractor's expense.
- b. A table satisfactory for the study of plans and two chairs shall be Provided by Contractor. Contractor shall Provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

#### **ARTICLE 30. AUTHORIZED REPRESENTATIVES**

The City shall designate representatives, who shall have the right to be present at the Project site at all times. The City may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector is not authorized to make changes in the Contract Documents. The inspector shall not be responsible for the Contractor's failure to carry out The Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

#### **ARTICLE 31. HOURS OF WORK**

- a. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the City, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8)

### **GENERAL CONDITIONS**

hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.

- b. Work shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m.
- c. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on City-observed holidays, unless otherwise Approved by the Engineer:
  - 1) Powered Vehicles
  - 2) Construction Equipment
  - 3) Loading and Unloading Vehicles
  - 4) Domestic Power Tool.

#### **ARTICLE 32. PAYROLL RECORDS**

- a. Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.
- b. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:
  - 1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
  - 2) A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the Department of Industrial Relations ("DIR").
- c. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- d. Any copy of records made available for inspection and furnished upon request to the public shall be marked or obliterated in such a manner as to prevent disclosure of an

#### **GENERAL CONDITIONS**

individual's name, address, and social security number. The name and address of the Contractor or any subcontractor shall not be marked or obliterated.

- e. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the City, forfeit Twenty-five Dollars (\$25.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

### **ARTICLE 33. PREVAILING RATES OF WAGES**

- a. The Contractor is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the City. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.
- b. The Contractor and each subcontractor shall forfeit as a penalty to the City not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontractor under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- c. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.
- d. If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall comply with the higher of the state or federal prevailing wage rates.

### **GENERAL CONDITIONS**

**ARTICLE 34. EMPLOYMENT OF APPRENTICES**

The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor. The Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

**ARTICLE 35. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**

Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

**ARTICLE 36. LABOR/EMPLOYMENT SAFETY**

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

**WORKERS' COMPENSATION INSURANCE**

The Contractor shall Provide, during the life of this Contract, workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Project site, and, in case any of sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Project site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

**ARTICLE 37. EMPLOYER'S LIABILITY INSURANCE**

Contractor shall provide during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The

**GENERAL CONDITIONS**

policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.

#### **ARTICLE 38. COMMERCIAL GENERAL LIABILITY INSURANCE**

- a. Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury – which may arise from or out of Contractor’s operations, use, and management of the Project site, or the performance of its obligations hereunder. Policy limits shall not be less than **\$2,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor’s indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.
- c. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor’s coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys’ fees, incurred by the City as a result thereof.
- d. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
- e. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

#### **GENERAL CONDITIONS**

### **ARTICLE 39. AUTOMOBILE LIABILITY INSURANCE**

Contractor shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount of, at least, one million dollars (\$1,000,000). Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the City. Such insurance shall comply with the provisions of Article 30 below.

### **ARTICLE 40. BUILDER'S RISK ["ALL RISK"]**

- a. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility until the Contract is formally accepted by the Governing Board for the work. The Contractor is required to file with the City a certificate evidencing fire insurance coverage.
- b. Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.
  - 1) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
  - 2) Coverage shall include all materials stored on site and in transit.
  - 3) Coverage shall include Contractor's tools and equipment.
  - 4) Insurance shall include boiler, machinery and material hoist coverage.
- c. Such insurance shall comply with the provisions of the Contract Documents.

### **ARTICLE 41. FORM AND PROOF OF CARRIAGE OF INSURANCE**

- a. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VIII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from the City. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- b. Contractor shall cause its insurance carrier(s) to furnish the City with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the City Risk Manager, provide original Certified copies of policies including all

### **GENERAL CONDITIONS**

Endorsements and all attachments thereto, showing such insurance is in full force and effect. The City, its Director's and officers, employees, agents or representatives are named as Additional Insureds and Provide a Waiver of Subrogation in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate or Stop Work pursuant to the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Project site, or commence operations under this Agreement until the City has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

- c. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- d. The City reserves the right to adjust the monetary limits of insurance coverage's during the term of this Contract including any extension thereof-if in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
- e. Contractor shall pass down the insurance obligations contained herein to all tiers of sub-contractors working under this Contract.

#### **ARTICLE 42. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- a. **Time for Completion/Liquidated Damages.** Work shall be commenced within ten (10) days of the date stated in the City's Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If The Work is not completed as stated in the Contract Documents, it is understood that the City will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the

#### **GENERAL CONDITIONS**

sum stipulated in the Contract for each day of delay until The Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

- b. **Inclement Weather.** Contractor shall abide the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.
- c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of The Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the City in writing of causes of delay. The City shall ascertain the facts and extent of delay and grant extension of time for completing The Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.
- d. **No Damages for Reasonable Delay.** The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay, including delays caused by items that are the responsibility of the City pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

#### **ARTICLE 43. COST BREAKDOWN AND PERIODIC ESTIMATES**

Contractor shall furnish on forms Approved by the City:

- a. Within ten (10) Days of award of the Contract a detailed estimate giving a complete breakdown of the Contract price;
- b. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the City to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.
- c. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.
- d. Following the City's Acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request.

#### **GENERAL CONDITIONS**

- e. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

#### **ARTICLE 44. MOBILIZATION**

- a. When a bid item is included in the Bid Form for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate (“Initial Mobilization”). When no bid item is provided for “Initial Mobilization,” payment for such costs will be deemed to be included in the other items of The Work.
- b. Payment for Initial Mobilization based on the lump sum provided in the Bid Form, which shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items:
  - 1. Obtaining and paying for all bonds, insurance, and permits.
  - 2. Moving on to the Project site of all Contractor’s plant and equipment required for first month’s operations.
  - 3. Installing temporary construction power, wiring, and lighting facilities.
  - 4. Establishing fire protection system.
  - 5. Developing and installing a construction water supply.
  - 6. Providing and maintaining the field office trailers for the Contractor and the Engineer, complete, with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.
  - 7. Providing on-site communication facilities for the Owner and the Engineer, including telephones, radio pagers, and fax machines.
  - 8. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
  - 9. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer’s specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

10. Arranging for and erection of Contractor's work and storage yard.
11. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
12. Full-time presence of Contractor's superintendent at the job site as required herein.
13. Submittal of Construction Schedule as required by the Contract Documents.

#### **ARTICLE 45. PAYMENTS**

- a. The City shall make monthly progress payments following receipt of undisputed and properly submitted payment requests. Contractor shall be paid a sum equal to ninety percent (90%) of the value of Work performed up to the last day of the previous month, less the aggregate of previous payments.
- b. The Contractor shall, after the full completion of The Work, submit a final payment application. All prior progress estimates shall be subject to correction in the final estimate and payment.
- c. Unless otherwise required by law, the final payment of ten percent (10%) of the value of the Work, if unencumbered, shall be paid no later than sixty (60) Days after the date of recordation of the Notice of Completion.
- d. Acceptance by Contractor of the final payment shall constitute a waiver of all claims against the City arising from this Contract.
- e. Payments to the Contractor shall not be construed to be an acceptance of any defective work or improper materials, or to relieve the Contractor of its obligations under the Contract Documents.
- f. The Contractor shall submit with each payment request the Contractor's conditional waiver of lien for the entire amount covered by such payment request, as well as a valid unconditional waiver of lien from the Contractor and all subcontractors and materialmen for all work and materials included in any prior invoices. Waivers of lien shall be in the forms prescribed by California Civil Code Section 3262. Prior to final payment by the City, the Contractor shall submit a final waiver of lien for the Contractor's work, together with releases of lien from any subcontractor or materialmen.

#### **ARTICLE 46. PAYMENTS WITHHELD AND BACKCHARGES**

In addition to amounts which the City may retain under other provisions of the Contract Documents the City may withhold payments due to Contractor as may be necessary to cover:

- a. Stop Notice Claims.
- b. Defective work not remedied.

#### **GENERAL CONDITIONS**

- c. Failure of Contractor to make proper payments to its subcontractors or suppliers.
- d. Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
- e. Damage to another contractor or third party.
- f. Amounts which may be due the City for claims against Contractor.
- g. Failure of Contractor to keep the record (“as-built”) drawings up to date.
- h. Failure to provide updates on the construction schedule.
- i. Site clean up.
- j. Failure of the Contractor to comply with requirements of the Contract Documents.
- k. Liquidated damages.
- l. Legally permitted penalties.

Upon completion of the Contract, the City will reduce the final Contract amount to reflect costs charged to the Contractor, backcharges or payments withheld pursuant to the Contract Documents.

**ARTICLE 47. CHANGES AND EXTRA WORK**

**a. Change Order Work.**

- 1) The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, the Contract amount and Contract time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract amount or the Contract time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
- 2) All claims for additional compensation to the Contractor shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the work in question has been done unless a written contract change order has been issued or a timely written notice of claim has been made by Contractor. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for

**GENERAL CONDITIONS**

herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions and provisions of the original Contract.

- 3) Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract time, within seven (7) Days after receipt of a scope of a proposed change order, unless the City requests that proposals be submitted in less than seven (7) Days.
- 4) Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
- 5) Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the City.
- 6) Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the City.
- 7) If the Contractor fails to submit the cost proposal within the seven (7) Day period (or as requested), the City has the right to order the Contractor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the contract price in accordance with the City's estimate of cost. If the change is issued based on the City estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the City's estimate was in error.
- 8) Estimates for lump sum quotations and accounting for cost-plus-percentage work shall be limited to direct expenditures necessitated specifically by the subject extra work, and shall be segregated as follows:
  - (a) Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra work cost will not be permitted unless the contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
  - (b) Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based

## GENERAL CONDITIONS

upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the Engineer shall determine the materials cost, at its sole discretion.

- (c) Tool and Equipment Use. No payment will be made for the use of small tools, tools which have a replacement value of \$1,000 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed.
- (d) Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
  - i. "Net Cost" is defined as consisting of costs of labor, materials and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up.
  - ii. For Work performed by the Contractor's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.
  - iii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work to which the Contractor may add five (5%) percent of the subcontractor's Net Cost.
  - iv. For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the Net Cost for Work to which the subcontractor and general contractor may each add an additional five (5 %) percent of the Net Cost of the lower tier subcontractor.
  - iv. No additional mark up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by City exceed twenty-five (25%) percent of the Net Cost as defined herein.
- 9) For added or deducted Work by subcontractors, the Contractor shall furnish to the City the subcontractor's signed detailed estimate of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors.
- 10) For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the City a detailed estimate or quotation of the cost to the Contractor, signed by such vendor or supplier.

## GENERAL CONDITIONS

- 11) Any change in The Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an extra; overhead and profit allowances shall not be applied if the net total cost is a credit. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.
- 12) Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the change order for work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's change order form in an attempt to reserve additional rights.
- 13) If the City disagrees with the proposal submitted by Contractor, it will notify the Contractor and the City will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with the City, a change order will be issued by the City. If no agreement can be reached, the City shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to the City within fifteen (15) Days of the issuance of the unilateral change order, disputing the terms of the unilateral change order.
- 14) No dispute, disagreement or failure of the parties to reach agreement on the terms of the change order shall relieve the Contractor from the obligation to proceed with performance of the work, including extra work, promptly and expeditiously.
- 15) Any alterations, extensions of time, extra work or any other changes may be made without securing consent of the Contractor's surety or sureties.

#### **ARTICLE 48. OCCUPANCY**

The City reserves the right to occupy or utilize any portion of The Work at any time before completion, and such occupancy or use shall not constitute Acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

#### **ARTICLE 49. INDEMNIFICATION**

Contractor shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract,

#### **GENERAL CONDITIONS**

including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of City's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782.

#### **ARTICLE 50. RECORD ("AS BUILT") DRAWINGS**

- a. Contractor shall prepare and maintain a complete set of record drawings (herein referred to as "as-builts") and shall require each trade to prepare its own as-builts. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire alarm, gas and plumbing. Contractor shall mark the as-builts to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and where shop drawings are used, Contractor must record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of The Work.
- b. Contractor shall note related change order numbers where applicable. Contractor shall organize as-builts into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. Contractor to also provide an electronic version of the as-builts. The suitability of the as-builts will be determined by the Engineer.

#### **ARTICLE 51. RESOLUTION OF CONSTRUCTION CLAIMS**

- a. In accordance with Public Contract Code Sections 20104 *et seq.* and other applicable law, public works claims of \$375,000 or less which arise between the Contractor and the City shall be resolved under the following the statutory procedure unless the City has elected to resolve the dispute pursuant to Public Contract Code Section 10240 *et seq.*
- b. **All Claims:** All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by the City.

#### **GENERAL CONDITIONS**

- c. **Claims Under \$50,000.** The City shall respond in writing to the claim within 45 days of receipt of the claim, or, the City may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the City and the claimant. The City's written response shall be submitted 15 days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.
- d. **Claims over \$50,000 but less than or equal to \$375,000.** The City shall respond in writing within 60 days of receipt, or, may request in writing within 30 days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the City may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the City and the claimant. The City's response shall be submitted within 30 days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available at all reasonable times, without any direct charge.
- e. The Contractor will submit the claim justification in the following format:
  - 1) Summary of claim merit and price, and Contract clause pursuant to which the claim is made.
  - 2) List of documents relating to claim
    - (a) Specifications
    - (b) Drawings
    - (c) Clarifications (Requests for Information)
    - (d) Schedules
    - (e) Other
  - 3) Chronology of events and correspondence
  - 4) Analysis of claim merit
  - 5) Analysis of claim cost
  - 6) Analysis of time impact analysis in CPM format
  - 7) Cover letter and certification of validity of the claim
- f. If the claimant disputes the City's response, or if the City fails to respond within the statutory time period(s), the claimant may so notify the City within 15 days of the receipt

## GENERAL CONDITIONS

of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the City shall schedule a meet and confer conference within 30 Days.

- g. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.
- h. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by City, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.

## **ARTICLE 52. CITY'S RIGHT TO TERMINATE CONTRACT**

- a. **Termination for Cause:** The City may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract if the Contractor: (i) refuses or fails to prosecute The Work or any part thereof with such diligence as will ensure its completion within the time required; (ii) fails to complete The Work within the required time; (iii) should file a bankruptcy petition or be adjudged a bankrupt; (iv) should make a general assignment for the benefit of its creditors; (v) should have a receiver appointed; (vi) should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials to complete the work; (vii) should fail to make prompt payment to subcontractors or for material or labor; (viii) persistently disregard laws, ordinances, other requirements or instructions of the City; or (ix) should violate any of the provisions of the Contract Documents.

The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) Days after the service of such notice, such condition shall cease or satisfactory arrangements (acceptable to the City) for the required correction are made, this Contract shall be terminated. In such case, Contractor shall not be entitled to receive any further payment until the Project has been finished. The City may take over and complete The Work by any method it may deem appropriate. Contractor and its surety shall be liable to the City for any excess costs or other damages incurred by the City to complete the Project. If the City takes over The Work, the City may, without liability for so doing, take possession of and utilize in completing The Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Project site.

- b. **Termination For Convenience:** The City may terminate performance of The Work in whole or, in part, if the City determines that a termination is in the City's interest.

The Contractor shall terminate all or any part of The Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the

convenience of the City, the extent of termination, and the effective date of such termination.

After receipt of Notice of Termination, and except as directed by the City, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

- 1) Stop Work as specified in the Notice.
  - 2) Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
  - 3) Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
  - 4) Terminate all subcontracts to the extent that they relate to the portions of The Work terminated.
  - 5) Place no further subcontracts or orders, except as necessary to complete the remaining portion of The Work.
  - 6) Submit to the City, within ten (10) Days from the effective date of the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by the City no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by the City's Termination for Convenience."
  - 7) These provisions are in addition to and not in limitation of any other rights or remedies available to the City.
- c. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

## GENERAL CONDITIONS

## **ARTICLE 53. WARRANTY AND GUARANTEE**

- a. Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract Documents; and that all Work conforms to the Contract Document requirements and is free of any defect whether performed by the Contractor or any subcontractor or supplier.
- b. Unless otherwise stated, all warranty periods shall begin upon the filing of the Notice of Completion. Unless otherwise stated, the warranty period shall be for one year.
- c. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.
- d. Contractor shall furnish the City with all warranty and guarantee documents prior to final Acceptance of the Project by the City.
- e. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the county shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Contractor's expense.
- f. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and Materials furnished under this Contract, the Contractor shall:
  - 1) Obtain for City all warranties that would be given in normal commercial practice;
  - 2) Require all warranties to be executed, in writing, for the benefit of the City; and
  - 3) Enforce all warranties for the benefit of the City, unless otherwise directed in writing by the City.

This Article shall not limit the City's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. The City specifically reserves all rights related to defective work, including but not limited to the defect claims pursuant to California Code of Civil Procedure Section 337.15.

#### **ARTICLE 54. DOCUMENT RETENTION & EXAMINATION**

- a. In accordance with Government Code Section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- b. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.
- c. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

#### **ARTICLE 55. SOILS INVESTIGATIONS**

When a soils investigation report for the Project site is available, such report shall not be a part of the Contract Documents. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the site before submitting its bid and must make whatever tests it deems appropriate to determine the underground condition of the soil.

#### **ARTICLE 56. SEPARATE CONTRACTS**

- a. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- b. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the work in place or discrepancies with the Contract Documents.
- c. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting

#### **GENERAL CONDITIONS**

directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

#### **ARTICLE 57. NOTICE AND SERVICE THEREOF**

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to City shall be addressed to the City as designated in the Notice Inviting Bids unless City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

#### **ARTICLE 58. NOTICE OF THIRD PARTY CLAIMS**

Pursuant to Public Contract Code Section 9201, the City shall provide Contractor with timely notification of the receipt of any third-party claim relating to the Contract.

#### **ARTICLE 59. STATE LICENSE BOARD NOTICE.**

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

#### **ARTICLE 60. INTEGRATION**

- a. Oral Modifications Ineffective. No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.
- b. Contract Documents Represent Entire Contract. The Contract Documents represent the entire agreement of the City and Contractor.

#### **ARTICLE 61. ASSIGNMENT**

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of the City. Any assignment without the written consent of the City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

### **GENERAL CONDITIONS**

**ARTICLE 62. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY**

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract.

**ARTICLE 63. ASSIGNMENT OF ANTITRUST ACTIONS**

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (chapter 2 (commencing with Section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time the City makes final payment to the Contractor, without further acknowledgment by the parties.

**ARTICLE 64. PROHIBITED INTERESTS**

No City official or representative who is authorized in such capacity and on behalf of the City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

**ARTICLE 65. LAWS AND REGULATIONS**

- a. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.
- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.
- c. Contractor acknowledges and understands that, pursuant to Public Contract Code Section 20676, sellers of "mined material" must be on an approved list of sellers published

**CITY OF COLTON  
DEPARTMENT OF PUBLIC WORKS**

**INSTRUCTIONS TO BIDDERS**

**1. AVAILABILITY OF CONTRACT DOCUMENTS**

Bids must be submitted to the City on the Bid Forms which are a part of the Bid Package for the Project. Prospective bidders may obtain one (1) complete set of Contract Documents at no cost. Contract Documents may be obtained from the City at the location(s) and at the time(s) indicated in the Notice Inviting Bids. Prospective bidders are encouraged to telephone in advance to determine the availability of Contract Documents. Any applicable charges for the Contract Documents are outlined in the Notice Inviting Bids.

The City may also make the Contract Documents available for review at one or more plan rooms, as indicated in the Notice Inviting Bids. Please Note: Prospective bidders who choose to review the Contract Documents at a plan room must contact the City to obtain the required Contract Documents if they decide to submit a bid for the Project.

**2. EXAMINATION OF CONTRACT DOCUMENTS**

The City has made copies of the Contract Documents available, as indicated above. Bidders shall be solely responsible for examining the Project Site and the Contract Documents, including any Addenda issued during the bidding period, and for informing itself with respect to local labor availability, means of transportation, necessity for security, laws and codes, local permit requirements, wage scales, local tax structure, contractors' licensing requirements, availability of required insurance, and other factors that could affect the Work. Bidders are responsible for consulting the standards referenced in the Contract. Failure of Bidder to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be given except as required under State law.

**3. INTERPRETATION OF CONTRACT DOCUMENTS**

Discrepancies in, and/or omissions from the Plans, Specifications or other Contract Documents or questions as to their meaning shall be immediately brought to the attention of the City by submission of a written request for an interpretation or correction to the City. Such submission, if any, must be sent to the Engineering Manager by faxing (909) 370-5072 or emailing to [vortiz@ci.colton.ca.us](mailto:vortiz@ci.colton.ca.us)

Any interpretation of the Contract Documents will be made only by written addenda duly issued and mailed or delivered to each person or firm who has purchased a set of Contract Documents. The City will not be responsible for any explanations or interpretations provided in any other manner. No person is authorized to make any oral interpretation of any provision in the Contract Documents to any bidder, and no bidder should rely on any such oral interpretation.

Bids shall include complete compensation for all items that are noted in the Contract Documents as the responsibility of the Contractor.

**INSTRUCTIONS TO BIDDERS**

4. **INSPECTION OF SITE; PRE-BID CONFERENCE AND SITE WALK**

Each prospective bidder is responsible for fully acquainting itself with the conditions of the Project Site (which may include more than one site), as well as those relating to the construction and labor of the Project, to fully understand the facilities, difficulties and restrictions which may impact the cost or effort required to complete the Project. To this end, a Pre-Bid Conference and Site Walk will be held on the date(s) and time(s) indicated in the Notice Inviting Bids.

5. **ADDENDA**

The City reserves the right to revise the Contract Documents prior to the bid opening date. Revisions, if any, shall be made by written Addenda. All addenda issued by the City shall be included in the bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the City issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of bids, the City will extend the deadline for submission of bids. The City may determine, in its sole discretion, whether an Addendum warrants postponement of the bid submission date. Each prospective bidder shall provide City a name, address and facsimile number to which Addenda may be sent, as well as a telephone number by which the City can contact the bidder. Copies of Addenda will be furnished by facsimile, first class mail, express mail or other proper means of delivery without charge to all parties who have obtained a copy of the Contract Documents and provided such current information. **Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. To this end, each bidder should contact the Public Works Department to verify that he has received all Addenda issued, if any, prior to the bid opening.**

6. **ALTERNATE BIDS**

If alternate bid items are called for in the Contract Documents, the lowest bid will be determined on the basis of the base bid only. However, the City may choose to award the contract on the basis of the base bid alone or the base bid and any alternate or combination of alternates. The time required for completion of the alternate bid items has been factored into the Contract duration and no additional Contract time will be awarded for any of the alternate bid items. The City may elect to include one or more of the alternate bid items, or to otherwise remove certain work from the Project scope of work, accordingly each Bidder must ensure that each bid item contains a proportionate share of profit, overhead and other costs or expenses which will be incurred by the Bidder.

7. **COMPLETION OF BID FORMS**

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute bid forms other than clear and correct photocopies of those provided by the City will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable) and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. **USE OF BLACK OR BLUE INK,**

INDELIBLE PENCIL OR A TYPEWRITER IS REQUIRED. Deviations in the bid form may result in the bid being deemed non-responsive.

**8. MODIFICATIONS OF BIDS**

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms, nor make substitutions thereon. Oral, telephonic and electronic modifications will not be considered, unless the Notice Inviting Bids authorizes the submission of electronic bids and modifications thereto and such modifications are made in accordance with the Notice Inviting Bids.

**9. DESIGNATION OF SUBCONTRACTORS**

Pursuant to State law, the Bidders must designate the name and location of each subcontractor who will perform work or render services for the Bidder in an amount that exceeds one-half of one percent (1/2%) of the Bidder's Total Bid Price or \$10,000, as well as the portion of work each such subcontractor will perform on the form provided herein by the City. No additional time will be provided to bidders to submit any of the requested information in the Designation of Subcontractor form.

**10. LICENSING REQUIREMENTS**

Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Section 7028.5 of the Business and Professions Code, the City shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the City shall reject the Bid. The City shall have the right to request, and Bidders shall provide within five (5) calendar days, evidence satisfactory to the City of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract. Please also note that, pursuant to Public Contract Code Section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code Section 2717(b) in order to supply mined material for this Contract.

**11. SIGNING OF BIDS**

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize

**INSTRUCTIONS TO BIDDERS**

that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

**12. BID GUARANTEE (BOND)**

Each bid shall be accompanied by: (a) cash; (b) a certified check made payable to the City; (c) a cashier's check made payable to the City; or (d) a bid bond payable to the City executed by the bidder as principal and surety as obligor in an amount not less than 10% of the maximum amount of the bid. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The cash, check or bid bond shall be given as a guarantee that the bidder shall execute the Contract if it be awarded to the bidder, shall provide the payment and performance bonds and insurance certificates and endorsements as required herein within ten (10) calendar days after notification of the award of the Contract to the bidder. Failure to provide the required documents may result in forfeiture of the bidder's bid deposit or bond to the City and the City may award the Contract to the next lowest responsive, responsible bidder, or may call for new bids.

**13. SUBMISSION OF SEALED BIDS**

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials in an envelope, sealed, addressed and delivered or mailed, postage prepaid to the City at the place and to the attention of the person indicated in the Notice Inviting Bids. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by City as provided herein. The envelope shall also contain the following in the lower left-hand corner thereof:

**Bid of** \_\_\_\_\_ **(Bidder's Name)**  
**for the** **AGUA MANSA ROAD / RANCHO AVENUE TRAFFIC SIGNAL PROJECT**

Only where expressly permitted in the Notice Inviting Bids, may Bidders submit their bids via electronic transmission pursuant to Public Contract Code Sections 1600 and 1601. The acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. City reserves the right to not accept electronically transmitted bids where not specifically authorized in the Notice Inviting Bids, and may reject any bid not strictly complying with City's designated methods for delivery.

**DELIVERY AND OPENING OF BIDS**

Bids will be received by the City at the address shown in the Notice Inviting Bids up to the date and time shown therein. The City will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the Bidder. It is the Bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the dates(s) and time(s) indicated.

**INSTRUCTIONS TO BIDDERS**

Bids will be opened at the date and time stated in the Notice Inviting Bids, and the amount of each Bid will be read aloud and recorded. All Bidders may, if they desire, attend the opening of Bids. The City may in its sole discretion, elect to postpone the opening of the submitted Bids. City reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid. In the event of a discrepancy between the written amount of the Bid Price and the numerical amount of the Bid Price, the written amount shall govern.

**14. WITHDRAWAL OF BID**

Prior to bid opening, a Bid may be withdrawn by the Bidder only by means of a written request signed by the Bidder or its properly authorized representative.

**15. BASIS OF AWARD; BALANCED BIDS**

The City shall award the Contract to the lowest responsive, responsible Bidder submitting a responsive Bid. The City may reject any Bid which, in its opinion when compared to other bids received or to the City's internal estimates, does not accurately reflect the cost to perform the Work. The City may reject as non-responsive any bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

**16. DISQUALIFICATION OF BIDDERS; INTEREST IN MORE THAN ONE BID**

No bidder shall be allowed to make, submit or be interested in more than one bid. However, a person, firm, corporation or other entity that has submitted a subproposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a subproposal or quoting prices to other bidders submitting a bid to the City. No person, firm, corporation, or other entity may submit subproposal to a bidder, or quote prices of materials to a bidder, when also submitting a prime bid on the same Project.

**17. INSURANCE REQUIREMENTS**

The successful bidder shall procure the insurance in the form and in the amount specified in the Contract Documents.

**18. AWARD PROCESS**

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder, the City Council may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment (Labor and Materials) Bond; and (3) the required insurance certificates and endorsements. Once the City notifies the Bidder of the award, the Bidder will have ten (10) consecutive calendar days from the date of this notification to execute the Contract and supply the City with all of the required documents and certifications. Regardless whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run ten (10) calendar days from the date of the notification. Once the City receives all of the properly drafted and executed documents and certifications from the Bidder, the City shall issue a Notice to Proceed to that Bidder.

**INSTRUCTIONS TO BIDDERS**

## 19. FILING OF BID PROTESTS

Bidders may file a "protest" of a Bid with the City's **City Engineer**. In order for a Bidder's protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific City staff determination or recommendation being protested;
- D. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, it will be rejected as invalid.

If the protest is valid, the City's **City Engineer**, or other designated City staff member, shall review the basis of the protest and all relevant information. The **City Engineer** will provide a written decision to the protestor. The protestor may then appeal the decision of the **City Engineer** to the **City Manager**.

## 20. WORKERS COMPENSATION

Each bidder shall submit the Contractor's Certificate Regarding Workers' Compensation form.

## 21. SUBSTITUTION OF SECURITY

The Contract Documents call for monthly progress payments based upon the percentage of the work completed. The City will retain ten percent (10%) of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the City will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

## 22. PREVAILING WAGES

The City has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are on file and available at Public Works Department or may be obtained online at <http://www.dir.ca.gov/dlsr>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s). If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall comply with the higher of the state or federal prevailing wage rates.

**23. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

**24. PERFORMANCE BOND AND PAYMENT (LABOR AND MATERIALS) BOND REQUIREMENTS**

Within the time specified in the Contract Documents, the Bidder to whom a Contract is awarded shall deliver to the City four identical counterparts of the Performance Bond and Payment (Labor and Materials) Bond in the form supplied by the City and included in the Contract Documents. Failure to do so may, in the sole discretion of City, result in the forfeiture of the Bid Guarantee. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment (Labor and Materials) Bond shall be for one hundred percent (100%) of the Total Bid Price.

**25. REQUEST FOR SUBSTITUTIONS**

The successful bidder shall comply with the substitution request provisions set forth in the Special Conditions, including any deadlines for substitution requests **which may occur prior to the bid opening date.**

**26. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the work will be located, unless otherwise expressly provided by the Contract Documents.

**27. EXECUTION OF CONTRACT**

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The City may require appropriate evidence that the persons executing the Contract are duly empowered to do so.

**END OF INSTRUCTIONS TO BIDDERS**

**INSTRUCTIONS TO BIDDERS**

**BID FORM**

NAME OF BIDDER: New West Signal

The undersigned, hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and all addenda, if any, for the following Project:

**AGUA MANSA ROAD/ RANCHO AVENUE TRAFFIC SIGNAL PROJECT  
IN THE CITY COLTON**

TIME OF COMPLETION: 90 CALENDAR DAYS

NO.	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	ITEM COST
1.	Traffic Signal and Lighting System (Including all Electrical Equipment)	LS	1	149,698. <sup>00</sup>	149,698. <sup>00</sup>
2.	Signing and Striping	LS	1	5,900. <sup>00</sup>	5,900. <sup>00</sup>
3.	Construction of ADA ramp, sidewalk, curb & gutter and all necessary work shown	LS	1	15,000. <sup>00</sup>	15,000. <sup>00</sup>
4.	Temporary Traffic Control	LS	1	1,500. <sup>00</sup>	1,500. <sup>00</sup>
5.	Mobilization	LS	1	1,500. <sup>00</sup>	1,500. <sup>00</sup>

**TOTAL BID PRICE (TOTAL OF ITEM COST):**

\$ 173,598.<sup>00</sup>  
Total Base Bid Price in Numbers

One Hundred Seventythree Thousand Five Hundred  
Total Base Bid Price in Written Form Ninety-eight Dollars

In case of discrepancy between the unit price and the item cost set forth for a unit basis item, the unit price shall prevail and, shall be utilized as the basis for determining the lowest responsive, responsible bidder. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Cost" column, then the amount set forth in the "Item Cost" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price. Final payment shall be determined by the Engineer from measured quantities of work performed based upon the unit price.

In case of discrepancy between the written price and the numerical price, the written price shall prevail.

The undersigned agrees that this Bid Form constitutes a firm offer to the City which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the bid opening, or until a Contract for the Work is fully executed by the City and a third party, whichever is earlier.

The Contract duration shall commence on the date stated in the City's Notice to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents. In no case shall the Contractor commence construction prior to the date stated in the City's Notice to Proceed.

Bidder certifies that it is licensed in accordance with the law providing for the registration of Contractors, License No. 720147, Expiration Date 3/31/10, class of license C-10, A. If the bidder is a joint venture, each member of the joint venture must include the above information.

The undersigned acknowledges receipt, understanding and full consideration of the following addenda to the Contract Documents.

1. Addenda No. 1 thru 2
2. Attached is the required bid security in the amount of not less than 10% of the Total Bid Price.
3. Attached is the fully executed Non-Collusion Affidavit form.
4. Attached is the completed Designation of Subcontractors form.
5. Attached is the completed Bidder Information Form.
6. Attached is the completed Contractor's Certificate Regarding Workers' Compensation form.
7. Bidder acknowledges and understands that, pursuant to Public Contract Code Section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code Section 2717(b) in order to supply mined material for this Contract.

**BID SCHEDULE**

I hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Name of Bidder New West Signal

Signature 

Name and Title Christian B. Wright, Partner

Dated 10-2-08

**CONTRACTOR'S CERTIFICATE REGARDING  
WORKERS' COMPENSATION**

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.

Name of Bidder New West Signal

Signature 

Name Christian B. Wright

Title Partner

Dated 10-02-08

**CONTRACTOR'S CERTIFICATE REGARDING  
WORKERS' COMPENSATION**

**BID BOND**

The makers of this bond are, New West Signal  
Surety, as Principal, and First National  
unto the City of Colton, hereinafter called the City, in the penal sum of TEN PERCENT (10%)  
OF THE TOTAL BID PRICE of the Principal submitted to CITY for the work described below,  
for the payment of which sum in lawful money of the United States, well and truly to be made,  
we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and  
severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted  
the accompanying bid dated October 2, 20 08, for AGUA MANSA ROAD / RANCHO  
AVENUE TRAFFIC SIGNAL PROJECT IN THE CITY COLTON

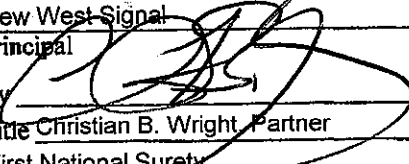
If the Principal does not withdraw its bid within the time specified in the Contract  
Documents; and if the Principal is awarded the Contract and provides all documents to the City  
as required by the Contract Documents; then this obligation shall be null and void. Otherwise,  
this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension  
of time, alteration or addition to the terms of the Contract Documents shall in affect its obligation  
under this bond, and Surety does hereby waive notice of any such changes.


In the event a lawsuit is brought upon this bond by the City and judgment is  
recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including  
reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument  
under their several seals this 1st day of October, 2008, the name and  
corporate seal of each corporation.

(Corporate Seal)

New West Signal  
Principal  
By   
Title Christian B. Wright, Partner  
First National Surety

(Corporate Seal)

Surety  
By   
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title James A. Dilks, Attorney-in-Fact



POWER OF ATTORNEY

First National Insurance Company of America  
Safeco Plaza  
Seattle, WA 98185

No. 13284

KNOW ALL BY THESE PRESENTS:

That **FIRST NATIONAL INSURANCE COMPANY OF AMERICA**, a Washington corporation, does hereby appoint  
\*\*\*\*\*JAMES A. DILKS; DAVID MERRILL; GARY B. MERRILL; Pasadena, California\*\*\*\*\*

its true and lawful attorney(s)-in-fact, with full authority to execute on behalf of the company fidelity and surety bonds or undertakings and other documents of a similar character issued by the company in the course of its business, and to bind **FIRST NATIONAL INSURANCE COMPANY OF AMERICA** thereby as fully as if such instruments had been duly executed by its regularly elected officers at its home office.

IN WITNESS WHEREOF, **FIRST NATIONAL INSURANCE COMPANY OF AMERICA** has executed and attested these presents

this 7th day of December, 2006

STEPHANIE DALEY-WATSON, SECRETARY

TIM MIKOLAJEWSKI, SENIOR VICE-PRESIDENT, SURETY

CERTIFICATE

Extract from the By-Laws of **FIRST NATIONAL INSURANCE COMPANY OF AMERICA**:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of  
**FIRST NATIONAL INSURANCE COMPANY OF AMERICA** adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,  
(i) The provisions of Article V, Section 13 of the By-Laws, and  
(ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and  
(iii) Certifying that said power-of-attorney appointment is in full force and effect,  
the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Stephanie Daley-Watson, Secretary of **FIRST NATIONAL INSURANCE COMPANY OF AMERICA**, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of this corporation, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 15<sup>th</sup> day of OCTOBER, 2008



STEPHANIE DALEY-WATSON, SECRETARY

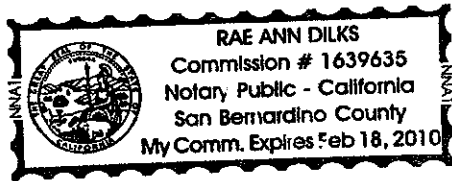
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of SAN BERNARDINO

On OCTOBER 1, 2008 before me, RAE ANN DILKS, Notary Public

personally appeared JAMES A. DILKS



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

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

WITNESS my hand and official seal.

Signature Rae Ann Dilks

Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

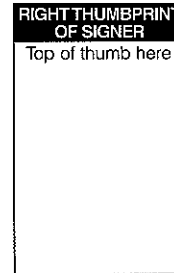
Signer Is Representing: \_\_\_\_\_



Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**ACKNOWLEDGMENT**

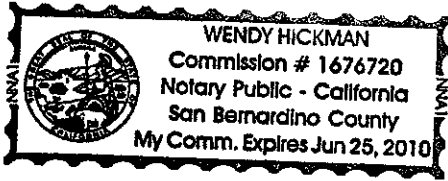
STATE OF CALIFORNIA  
COUNTY OF San Bernardino }

On 10-02-08, before me, Wendy Hickman Notary  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Christian B. Wright  
Name(s) of Signer(s)

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

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



Place Notary Seal Above

WITNESS my hand and official seal.

Wendy Hickman  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**CAPACITY CLAIMED BY SIGNER**

- Individual
- Corporate Officer

Title(s)

- Partner(s)
  - Attorney-In-Fact
  - Trustee(s)
  - Guardian/Conservator
  - Other:
- Limited  
 General

Signer is representing:  
Name Of Person(s) Or Entity(ies)

NWS

**DESCRIPTION OF ATTACHED DOCUMENT**

Colton

Bid Bond

Title or Type of Document

one

Number Of Pages

10-01-08

Date Of Document

James A. Dilks

Signer(s) Other Than Named Above

**DESIGNATION OF SUBCONTRACTORS**

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, each bidder shall set forth below: (a) the name and the location of the place of business and (b) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price. Notwithstanding the foregoing, if the work involves streets and highways, then the Contractor shall list each subcontractor who will perform work or labor or render service to Contractor in or about the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, to be performed under the Contract in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or \$10,000, whichever is greater if the work involves streets or highways, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

Portion of Work	Subcontractor	Location of Business
ramps, sidewalk curb & gutter	B+T Works, Inc	23905 Clinton Keith Rd Ste 114-351 Wildomar, CA 92595
Signing & striping	J.P. Striping, Inc	PO Box 278 Beaumont, CA 92223
Loops	Smithson Electric, Inc	1938 Kattela Orange, CA 92867

**DESIGNATION OF SUBCONTRACTORS**

Portion of Work	Subcontractor	Location of Business

Name of Bidder New West Signal

Signature 

Name and Title Christian B. Wright, Partner

Dated 10-02-08

Portion of the Work	Subcontractor	Location of Business	% of the Work
Bid Item 3	B&T Works Inc	Wildomar, CA	8.6%
Bid Item 2	J.P. Striping Inc	Beaumont, CA	3.45%
Bid Item 1	Smithson Elec, Inc	Orange, CA	5.9%

**DESIGNATION OF SUBCONTRACTORS**



**INFORMATION REQUIRED OF BIDDERS**

**A. INFORMATION ABOUT BIDDER**

[\*\*Indicate not applicable ("N/A") where appropriate.\*\*]

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1.0 Name of Bidder: New West Signal  
2.0 Type, if Entity: Partnership  
3.0 Bidder Address: 14055 Foothill Blvd.  
Fontana, CA 92335

(909)356-1789 (909)356-1735  
Facsimile Number Telephone Number

4.0 How many years has Bidder's organization been in business as a Contractor?  
12+

5.0 How many years has Bidder's organization been in business under its present name?  
12+

5.1 Under what other or former names has Bidder's organization operated?: N/A

6.0 If Bidder's organization is a corporation, answer the following:

6.1 Date of Incorporation: \_\_\_\_\_  
6.2 State of Incorporation: \_\_\_\_\_  
6.3 President's Name: \_\_\_\_\_  
6.4 Vice-President's Name(s): N/A \_\_\_\_\_  
6.5 Secretary's Name: \_\_\_\_\_  
6.6 Treasurer's Name: \_\_\_\_\_

**INFORMATION REQUIRED OF BIDDERS**

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: 07/31/1996

7.2 Name and address of all partners (state whether general or limited partnership):

Christian B. Wright - 865 W. 23<sup>rd</sup> St., Upland, CA 91784

Mark D. Mense - 5889 Elmhurst, R.C., CA 91739

8.0 If other than a corporation or partnership, describe organization and name principals:

N/A

9.0 List other states in which Bidder's organization is legally qualified to do business.

N/A

10.0 What type of work does the Bidder normally perform with its own forces?

Traffic Signals and Street Lighting

11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

No

12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

No

**INFORMATION REQUIRED OF BIDDERS**

14.0 List Trade References:

McCain - Vista, Ca 760-727-8100  
JTB Supply - Orange, Ca 714-639-9498  
Econolite - Anaheim, Ca 714-630-3700

15.0 List Bank References (Bank and Branch Address):

Vineyard Bank - 9590 Foothill Blvd.,  
Rancho Cucamonga, CA 91730  
(909) 987-0177

16.0 Name of Bonding Company and Name and Address of Agent:

First National Insurance Company of America - Surety  
A I I B - Agent  
255 W. Foothill Blvd., Upland, Ca 91786



**C. LIST OF COMPLETED PROJECTS - LAST THREE YEARS**

[\*\*Duplicate Page if needed for listing additional completed projects.\*\*]

Please include only those projects which are similar enough to demonstrate Bidder's ability to perform the required Work.

Project Client	Description of Bidder's Work	Period of Performance	Cost of Bidder's Work	Contact Name & Phone
City of Ontario	Street Lights	4/08 - 6/08	146,519	Steve Latino 909-395-2123
City of Rialto	Warning Light	3/08 - 5/08	96,000	Jaimi Cruz 909-421-4999
City of San Dimas	S/L conduit	7/07 - 8/07	40,768	Steve Bartagan 909-394-6247
City of San Bernardino	Traffic Signal	6/07 - 12/07	148,191	Henry Wingson 909-384-5368
City of Moreno Valley	Traffic Signal	7/07 - 2/08	229,074	Bruce Blank 951-413-3134
City of Corina	Traffic Signal	5/07 - 10/07	136,764	Leo Tolentino 626-858-7251

**D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE**

**Personnel:**

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:

Mark Mensen, Partner 50%  
Chris Wright, Partner 50%

2. Summarize each person's specialized education:

N/A

3. List each person's years of construction experience relevant to the project:

Mark Mensen - 22 years  
Chris Wright - 20 years

4. Summarize such experience:

Mark Mensen 1985-1996 Hovey Electric - installing signals  
1996-present Partner at New West Signal  
Chris Wright 1987-1996 Hovey Electric - installing signals  
1996-present Partner at New West Signal

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

**Additional Bidder's Statements:**

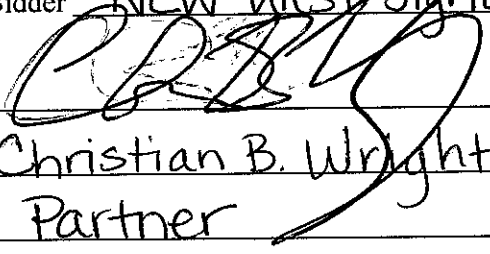
If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

n/a

**E. VERIFICATION AND EXECUTION**

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

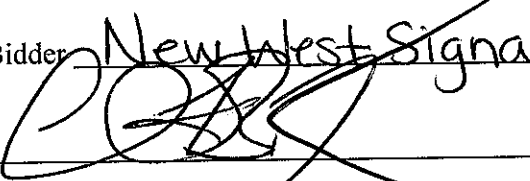
I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder New West Signal  
Signature   
Name Christian B. Wright  
Title Partner  
Dated 10-02-08

NON-COLLUSION AFFIDAVIT

I, Christian B. Wright, being first duly sworn, deposes and says that he is Partner of New West Signal the party making the attached 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.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Name of Bidder New West Signal  
Signature   
Name Christian B. Wright  
Title Partner  
Dated 10-02-08

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

State of California

County of San Bernardino } ss.

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

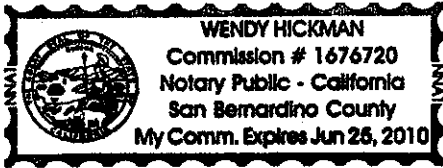
Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this  
2nd day of October, 2008, by  
Date Month Year  
 (1) Christian B. Wright,  
Name of Signer

Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(2) \_\_\_\_\_ (and)  
Name of Signer  
n/a



Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Wendy Hickman  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Further Description of Any Attached Document**

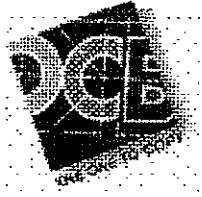
Title or Type of Document: Non Collusion

Document Date: 10.02.08 Number of Pages: one

Signer(s) Other Than Named Above: n/a

**RIGHT THUMBPRINT OF SIGNER #1**  
 Top of thumb here

**RIGHT THUMBPRINT OF SIGNER #2**  
 Top of thumb here

**Sent on Behalf of:**

Jess Soto  
City of Colton  
160 South 10th Street  
Colton, California 92324  
Phone: 909 514-4213 Fax: 909 370 5072  
Email: jsoto@ci.colton.ca.us

**Notification of Addendum 1****Agua Mansa Rd-Rancho Ave Traffic Signal Project**

**To:** Wendy \*\*\*  
New West Signal  
14055 Foothill Blvd.  
Fontana, California 92335

**Phone:** 909-356-1735  
**Fax:** 909-356-1789  
**Email:** newwestsignal@sbcglobal.net

Dear Planholder,

An addendum has been issued for the project Agua Mansa Rd-Rancho Ave Traffic Signal Project.


Please download the following file(s): N/A

**[Click here to acknowledge receipt of the addendum notice.](#)**

[Click here to view and order plans online, using PlanWell.](#)

**Please Note:** Attention FAX Recipients: This addendum is being distributed by email. Please contact the PlanWell BidServices Coordinator to provide your email address to receive the attachments.

PlanWell BidServices Coordinator: Mario Machuca  
Phone: 951-686-0530  
Email: mariom@ocbinc.com

DATE: September 22, 2008  
FROM:  THOMAS I WILLIAMS, P.E.  
CITY ENGINEER  
TO: ALL PLAN HOLDERS

**ADDENDUM No. 1**  
**PUBLIC WORKS DEPARTMENT**  
**AGUA MANSA ROAD / RANCHO AVENUE**  
**TRAFFIC SIGNAL PROJECT**  
**IN THE CITY OF COLTON**  
**EFFECTIVE September 22, 2008**

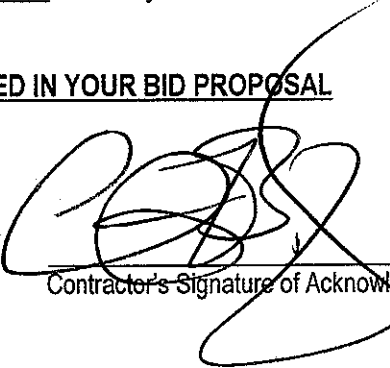
As of September 22, 2008, the following modification shall be incorporated into the existing Contract Documents and Specifications for the **AGUA MANSA ROAD / RANCHO AVENUE TRAFFIC SIGNAL PROJECT**:

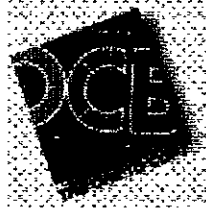
1. Bidders shall possess the following California Contractor's license in order to perform the Work of this Project: *Class "A"* or *"C-10"* or a letter from **Contractor's Licensing Board** outlining the combination of various licenses necessary to perform all the work at the time the bid is submitted to the City.
  
2. Conduits shall be hot-dipped galvanized rigid steel conduit with metallic fittings and insulated bonded bushings.

If you have any questions, please contact Victor Ortiz, Public Works Department @ (909) 370-5065, or by FAX @ (909) 370-5072, or by E-mail [vortiz@ci.colton.ca.us](mailto:vortiz@ci.colton.ca.us). Thank you.  
End of Addendum I

**A SIGNED COPY OF THIS ADDENDUM MUST BE INCLUDED IN YOUR BID PROPOSAL**

**BID SET**

  
\_\_\_\_\_  
Contractor's Signature of Acknowledgment

**Sent on Behalf of:**

Jess Soto  
City of Colton  
160 South 10th Street  
Colton, California 92324  
Phone: 909 514-4213 Fax: 909 370 5072  
Email: jsoto@ci.colton.ca.us

**Notification of Addendum 2****Agua Mansa Rd-Rancho Ave Traffic Signal Project**

**To:** Wendy \*\*\*  
New West Signal  
14055 Foothill Blvd.  
Fontana, California 92335

**Phone:** 909-356-1735  
**Fax:** 909-356-1789  
**Email:** newwestsignal@sbcglobal.net

Dear Planholder,

An addendum has been issued for the project Agua Mansa Rd-Rancho Ave Traffic Signal Project.

**Please download the following file(s): N/A**

**[Click here to acknowledge receipt of the addendum notice.](#)**

**[Click here to view and order plans online, using PlanWell.](#)**

**Please Note:** Attention FAX Recipients: This addendum is being distributed by email. Please contact the PlanWell BidServices Coordinator to provide your email address to receive the attachments.

PlanWell BidServices Coordinator: Mario Machuca  
Phone: 951-686-0530  
Email: mariom@ocbinc.com

DATE: September 30, 2008

FROM:  THOMAS J WILLIAMS, P.E.  
CITY ENGINEER

TO: ALL PLAN HOLDERS

**ADDENDUM No. II**  
**PUBLIC WORKS DEPARTMENT**  
**AGUA MANSA ROAD / RANCHO AVENUE**  
**TRAFFIC SIGNAL PROJECT**  
**IN THE CITY OF COLTON**  
**EFFECTIVE September 30, 2008**


As of September 30, 2008, the following modification shall be incorporated into the existing Contract Documents and Specifications for the **AGUA MANSA ROAD / RANCHO AVENUE TRAFFIC SIGNAL PROJECT**:

1. The specified product for the battery back-up system is **TESCO Controls, Incorporated or any approved equal.**

If you have any questions, please contact Victor Ortiz, Public Works Department @ (909) 370-5065, or by FAX @ (909) 370-5072, or by E-mail [vortiz@ci.colton.ca.us](mailto:vortiz@ci.colton.ca.us). Thank you.  
End of Addendum I

**A SIGNED COPY OF THIS ADDENDUM MUST BE INCLUDED IN YOUR BID PROPOSAL**

**BID SET**

  
Contractor's Signature of Acknowledgment

