

CITY OF GOLETA



CONTRACT BIDDING DOCUMENTS SPECIFICATIONS AND STANDARD DRAWINGS

FOR THE

SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA 4308

By 
Rosemarie Gaglione,
Public Works Director

Project Number: FEMA 4308
Bid Number: 05-17

Bid Opening: September 12, 2017 @ 3:00 P.M.

For use with Caltrans Standard Specifications
2010 Edition (including applicable amendments)

As of January, 2017

This Page Intentionally Left Blank

TABLE OF CONTENTS

CALTRANS STANDARD SPECIFICATIONS, 2010 EDITION (including applicable amendments and Caltrans 2010 Standard Special Provisions, current as of the date of the Notice Inviting Sealed Bids, which are incorporated by reference – not provided).

SECTION

A. NOTICE INVITING SEALED BIDS	A-1
B. BIDDING INSTRUCTIONS	B-1
1. ATTACHMENT A TO BIDDING INSTRUCTIONS – EQUAL SUBSTITUTION REQUEST FORM.....	B-11
C. PROPOSAL	C-1
BIDDING SHEET	C-7
D. CONTRACT	D-1
1. CONTRACT.....	D-3
2. PERFORMANCE BOND FORM.....	D-19
3. PAYMENT BOND FORM.....	D-23
E. CITY GENERAL PROVISIONS	E-1
Division I – GENERAL PROVISIONS.....	E-2
Section 1 – General.....	E-2
Section 2 – [not used] See Notice Inviting Sealed Bids and Bidding Instructions	
Section 3 – Contract Award and Execution.....	E-8
Section 4 – Scope of Work.....	E-9
Section 5 – Control of Work.....	E-18
Section 6 – Control of Materials.....	E-27
Section 7 – Legal Relations and Responsibility to the Public.....	E-31
Section 8 – Prosecution and Progress.....	E-35

Section 9 – Payment.....	E-44
Progress Payment Request Form	E-48
Progress Payment Request – Detail Form	E-49
Quantity Change Verification Form	E-51
Final Release Payment Form	E-52
Post-Construction Waste Reduction & Recycling Summary Report Form	E-53
Division II – GENERAL CONSTRUCTION.....	E-58
Section 10 – General.....	E-58
Section 12 – Temporary Traffic Control.....	E-59
Section 14 – Environmental Stewardship.....	E-61
Division III – GRADING.....	E-62
Section 17 – Watering.....	E-62
Section 19 – Earthwork.....	E-62
F. CITY SPECIAL PROVISIONS	F-1
G. FEDERAL REQUIREMENTS	G-1

APPENDICES

1. Sample Notifications
2. Minor Concrete Measurement Exhibit

SECTION A NOTICE INVITING SEALED BIDS

NOTICE INVITING SEALED BIDS FOR THE SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA 4308

130 Cremona Drive, Suite B, City of Goleta, CA

PUBLIC NOTICE IS HEREBY GIVEN that the City of Goleta ("CITY"), invites sealed bids for the above stated project and will receive such bids in the office of the City Clerk, 130 Cremona Drive, Suite B, Goleta, California 93117, **before 3:00 PM on Tuesday September 12, 2017**, and will be publicly opened and read aloud promptly thereafter. Faxes or any electronic format is not acceptable. Copies of the Contract Documents and Specifications are available from the CITY, 130 Cremona Drive, Suite B, Goleta, California 93117 upon payment of a \$20.00 non-refundable fee if picked up, or payment of a \$30.00 non-refundable fee, if mailed or no payment to CITY if obtained from Construction Bidboard, Inc. at <http://www.ebidboard.com/>, or CITY website at <http://www.cityofgoleta.org/i-want-to/view/city-bid-opportunities>.

The work includes all labor, material, supervision, plant and equipment necessary to construct and deliver a finished San Jose Creek Channel Emergency Repair Project – PROJECT NO. FEMA 4308. Work includes removing damaged articulated slope revetment (ASR); excavation, installation of rip-rap rock, installation of ASR enhanced anchoring per the project plans and specifications in San Jose Creek Channel within the City of Goleta, CA. The contract period is 15 Working Days. **Contractors must be able to commence construction within five (5) Working Days of Contract Award by CITY.**

Any contract entered into pursuant to this notice will incorporate provisions of the California Labor Code. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations per California Labor Code Section 1771.4, including prevailing wage rates and apprenticeship employment standards. Affirmative action to ensure against discrimination in employment practices on the basis of race, color, national origin, ancestry, sex, or religion will also be required. The CITY hereby affirmatively ensures that all business enterprises will be afforded full opportunity to submit bids in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, sex, or religion in any consideration leading to the award of contract.

Note that this project is subject to Davis Bacon Act.

Bids must be prepared on the approved bid forms in conformance with the "Bidding Instructions" and the General Provisions and submitted in a sealed envelope plainly marked on the outside, **"SEALED BID FOR SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA 4308. DO NOT OPEN WITH REGULAR MAIL."** The bid must be accompanied by cash or cashier's check, certified cashier's check, or bidder's bond executed by an admitted surety, made payable to CITY. The bid security shall be an amount equal to ten percent (10%) of the total maximum amount bid with their proposals as required by California law.

A contract may only be awarded to the lowest responsive and responsible bidder that holds a valid Class “A” Contractor’s license or specialty licensing in accordance with the provisions of the California Business and Professions Code.

Failure to provide proof of the contractor’s current registration pursuant to Section 1725.5 of the Labor Code may result in rejection of the bid as non-responsive. Failure to comply with enforcement provisions pursuant to Section 1771.4 of the Labor Code may result in a determination that the bidder is not responsible.


The Contractor Company, including the Responsible Managing Officer (RMO) for the Contractor Company, shall demonstrate a minimum of three (3) years’ experience successfully performing projects of substantially similar type, magnitude, and character of the work bid. The CITY reserves the right to reject all bids, reject any bid that is not responsive to the invitation, or to waive any minor irregularity and to take all bids under advisement for a period of up to ninety (90) days.

Pursuant to Public Contract Code section 22300, the successful bidder may substitute certain securities for funds withheld by CITY to ensure performance under the Contract or, in the alternative, request the CITY to make payment of retention to an escrow agent.

Any protest to an intended award of this contract shall be made in writing addressed to the City Clerk prior to the award. Any protest may be considered and acted on by the City Council at the time noticed for award of the contract. To request a copy of the notice of agenda for award, please contact the City Clerk (805) 961-7505 or register on the CITY’s website (www.cityofgoleta.org).

For information relating to the details of this Project and bidding requirements contact Robert Woodward in writing at rwoodward@cityofgoleta.org.

CITY OF GOLETA



Deborah S. Lopez, City Clerk

Published:

Santa Barbara News Press: August 28, 2017 and September 4, 2017

SECTION B BIDDING INSTRUCTIONS

Replace the entire Section 2 BIDDING Caltrans Standard Specifications with the following:

1. DEFINITIONS. Unless provided otherwise, the definitions in the contract documents are applicable to all bidding documents.

- 1.1 “Addenda” means written or graphic instruments issued by the City before the bid deadline that modify or interpret the bidding documents by additions, deletions, clarifications, or corrections.
- 1.2 “Alternate” means an amount stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as Alternate Work, to be added or deducted from the Total Base Bid, which shall be the Contractor’s responsibility if the City accepts the Alternate Bid Item.
- 1.3 “Bid Deadline” means the date and time designated in the notice inviting sealed bids as the last date and time for receipt of bids, as may be revised by addenda.
- 1.4 “Bidder” means a person or firm that submits a bid.
- 1.5 “Bidding Documents” means the Notice Inviting Sealed Bids, Bidding Instructions, the City-prescribed bid forms, which each bidder must complete to submit a bid, the Contract Documents enumerated in the Agreement and all other construction documents prepared and issued for bidding purposes including all addenda.
- 1.6 “Inspector” means the person designated by the engineer to ensure specification compliance.
- 1.7 “Total Base Bid” means the sum stated in the bid for which bidder offers to perform the Work described in the bidding documents, but not including alternates.
- 1.8 “Unit Price” means an amount entered in the bid by bidder or a “Contract Item” price established by the City in the bid, as a price per unit of measurement for payment for materials, equipment or services including taxes, supervision, overhead and profit for a portion of the work described in the Bidding Documents.

2. BIDDER'S REPRESENTATIONS. By making its bid, bidder represents that:

- 2.1 Bidder read, understood, and made the bid pursuant to the requirements in the bidding documents.
- 2.2 **Examination of Site and Bidding Documents.** The Bidder, at its sole cost and expense, is required to examine carefully the Bidding Documents and visit the Project site to become fully acquainted with the conditions affecting the Work. Bidders shall visit the site and ascertain the existence of surface, subsurface and other conditions affecting the construction and cost of the work based upon information indicated in the Bidding Documents, Supplemental Project Information and surface indicators including, but not limited to, flags, stakes, painted indicators such as arrows, pedestals, fire hydrants, communications poles and bases, manhole covers and other above ground indicators. The Drawings and specifications contained in these Bidding Documents do not constitute a representation or warranty that any conditions shown therein actually exist. Soil and test hole data, water table elevations and soil analyses shown on the Drawings or included in the Specifications apply only as set out in section All soil and test hole data, groundwater elevations, and soil analyses shown on the Plans or included in the Special Provisions apply only at the location of the test holes and to the depths indicated. Soil test reports for test holes which have been drilled are available for inspection at the office of the Engineer. Additional subsurface exploration may be performed by Bidders or the Contractor at their own expense. The indicated groundwater elevation is that which existed on the date specified in the data. It is the Contractor's responsibility to determine and allow for the groundwater elevation on the date the Work is performed. A difference in groundwater elevation between what is shown in soil boring logs and what is actually encountered during construction will not be considered as a basis for Extra Work. By submitting a Bid, Bidder represents: (1) that Bidder has read and understands the Bidding Documents and has visited the site; (2) the Bid is made in compliance with the Bidding Documents and is based upon the labor, materials, equipment, and systems required by the Bidding Documents; (3) that Bidder understands that all labor, materials, equipment, and systems to be furnished for the Work shall be furnished for the prices bid; (4) that it has visited the Project site, familiarized itself with the local conditions under which the Work is to be performed; (5) that it is fully experienced, qualified and competent to perform the Work set forth in the Contract Documents; (6) that it shall not damage or endanger and shall preserve and protect adjacent properties; (7) that it is properly equipped, organized and financed to perform the Work; (8) that it is properly permitted and licensed by the California Contractors State Licensing Board to perform the Work; (9) that it has familiarized itself with all conditions bearing upon transportation, disposal, handling and storage of materials; (10) that it has familiarized itself with the availability of labor, water, electric power, and roads; (11) that it has familiarized itself with uncertainties of weather, or similar physical conditions at the Project site; (12) that it has familiarized itself with the character of equipment and facilities needed preliminary to and during performance of the Work; (13) that it has familiarized itself with the staging and material storage constraints of the Project site and surrounding buildings and will confine its staging and storage operations to approved areas; (14) that it will coordinate its construction activities with the other contractors performing work

on the Project site, if any, including, but not limited to, any Separate Contractor retained by the City; and (15) that the Bidder has checked figures set forth in the Bid Schedule and understands that neither the City nor any officer or employee therefore will be responsible for any misunderstandings, errors, or omissions on the part of the Bidder in submitting its Bid. Should the City allow the Contractor access to certain City property for use as laydown storage area for equipment and materials as part of this specific project, a Right of Entry and License Agreement is required in the form specified in the City Special Provisions. The Special Provisions may have specific details with respect to Contractor laydown / yard storage facilities and will take precedence over any allowable access to any City Property. Public streets will not be used for storage. The failure of a Bidder to receive or examine any of the Bidding Documents or to inspect the site shall not relieve such Bidder from any obligation with respect to the Bid, the Contract, or the Work required under the Contract Documents.

- 2.3 Bidder and all subcontractors, regardless of tier, have the appropriate registrations and current licenses issued by the State of California Contractor's State License Board and Department of Industrial Relations (DIR) for the Work to be performed. If Bidder is a joint venture, the Bidder will have a joint venture license appropriate for the performance of the Work, and each member of the joint venture will likewise have the appropriate license. Business and professions code §§ 7000-7191 establish licensing requirements for contractors. If a bidder that is a specialty contractor, submits a bid involving 3 or more specialized building trades, the Work of which is more than incidental and supplemental to the performance of the work for which Bidder holds a specialty contractor license, Bidder must also hold either (1) a specialty contractor "C" license in each such trade or (2) a general engineering contractor "A" license. This requirement is applicable whether or not Bidder lists a subcontractor for each such trade.
- 2.4 Bidder shall have the expertise, including the Responsible Managing Officer (RMO) for the Contractor Company, demonstrating a minimum of three (3) years' experience successfully performing projects of the substantially similar type, magnitude, and character of the work bid, and financial capacity to perform and complete all obligations under the bidding documents.
- 2.5 The person executing the bid form is duly authorized and empowered to execute the bid form on bidder's behalf.
- 2.6 Bidder is aware of and, if awarded the contract, will comply with legal requirements in its performance of the Work.
- 2.7 Bidder is aware of and, if identified as the apparent lowest responsible bidder, would be required to pay City business license fee(s).

3. BIDDING DOCUMENTS.

- 3.1 Bidders may obtain complete sets of the bidding documents from Construction Bidboard, Inc. (eBidboard), the City website, or the City's Public Works Department for the sum stated in the notice inviting sealed bids.
- 3.2 Bidders will use a complete set of bidding documents in preparing bids.
- 3.3 The City makes copies of the bidding documents available, on the above terms, for the sole purpose of obtaining bids for the Work and does not confer a license or grant permission for any other use of the bidding documents.
- 3.4 The City does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading, or printing of the Bidding Documents.

4. INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS.

- 4.1 Before submitting its bid, bidder will carefully study and compare the various documents comprising the bidding documents and compare them with any other work being bid concurrently or presently under construction which relates to the Work for which the bid is submitted; will examine the project site, the conditions under which the Work is to be performed, and the local conditions; and will at once report to the City's representative errors, inconsistencies, or ambiguities discovered.
- 4.2 Bidder requests for clarification or interpretation of the bidding documents shall be addressed in writing to the City's representative at least seven (7) calendar days before the bid deadline.
- 4.3 Clarifications, interpretations, corrections, and changes to the bidding documents will only be made by addenda. Purported clarifications, interpretations, corrections, and changes to the bidding documents made in any other manner will not be binding and bidders will not rely upon them.

5. ADDENDA.

- 5.1 Before the Bid Deadline, the City may modify the Work, the Bidding Documents or any portion(s) thereof by the issuance of written addenda. Addenda will be in writing and issued only by the City.
- 5.2 Addenda will be posted to the City's website, eBidboard, and distributed to certain planrooms. Addenda will be mailed or delivered to all who are known by the City to have received a complete set of bidding documents and who have provided a mailing address for receipt of addenda.
- 5.3 Copies of addenda will be made available for inspection at the City's Public Works Department.
- 5.4 The City will issue addenda so that they are received by prospective bidders not less than three (3) business days before the bid deadline. Addenda that withdraw

the request for bids or postpone the bid deadline may be issued any time before the bid deadline.

- 5.5 Each bidder is responsible for ensuring that it has received all issued addenda before submitting a bid. All bidders are required to acknowledge and confirm receipt of each and every addendum in their Bid Proposal Form. Failure to acknowledge all Addenda may result in a Bid being deemed nonresponsive and not eligible for award of the Contract.

6. PRODUCT SUBSTITUTIONS. No requests for product substitutions will be considered before award of contract unless requested through the Request for Information (RFI) process so that all bidders will be informed. Bidders wishing to obtain authorization for an or equal substitution of an equivalent material, product or equipment, shall submit all requests for or equal substitution using the form included as **Attachment A** to these Bidding Instructions, together with data substantiating Bidder's representation that the non-specified item is of equal quality to the item. Requests for product substitutions not handled through the RFI process will only be considered after award of the contract and in the manner provided for in the contract documents. Authorization of an equal substitution of equivalent materials is solely within the discretion of the City and, if given, shall be made by Addendum or Change Order issued by the City. Bids shall not be based on any or equal substitution request that has not been authorized in writing by City Addendum. In the absence of a written Addendum authorizing a pre-Bid or equal substitution request, the request shall be deemed denied.

7. SUBCONTRACTORS.

- 7.1 Each bidder will list in the bid form all first-tier subcontractors that will perform work, labor or render such services in excess of ½ of one percent of the total bid of the total bid or \$10,000, whichever is greater. The following information is required for each subcontractor: (1) work activity; (2) name of subcontractor; (3) city of subcontractor's business location; and (4) California contractor's license number. An inadvertent error in listing the California contractor license number provided shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted to the City by the Bidder within 24 hours after the bid opening and provided the corrected contractor's license number corresponds to the submitted name and location for that subcontractor. Failure to list any of these other items on the bid form may result in the City treating the bid as if no subcontractor was listed for the work and that bidder represents to the City that it is fully qualified to perform that portion of the Work and will so perform such Work.
- 7.2 Substitution of subcontractors after the bid deadline who are listed in the bid form will only be allowed with the City's written consent and in accordance with California law.

8. NOT USED

9. FORM AND STYLE OF BIDS.

- 9.1. Bids will be submitted on the bid form included with the bidding documents. Bids not submitted on the City's bid form may be rejected. All blanks on the bid form must be filled in legibly in ink or by typewriter.
- 9.2. Bidder's failure to submit a price for any alternate or unit price may result in the bid being considered as non-responsive. If alternates are called for and no change in the lump sum base bid is required, enter "no change."
- 9.3. Each bidder must fill out the "bidders statement of past contract disqualifications" form stating any and all instances of contract disqualifications due to a violation of a law or safety regulation. The bidder must explain the circumstances of each disqualification.
- 9.4. Bidder is not allowed to make stipulations on the bid form nor qualify the bid in any manner.
- 9.5. The bids must be based upon full completion of all the Work as shown on the plans and specifications. It is expressly understood that the plans are drawn with as much accuracy as is possible in advance, but should errors, omissions or discrepancies exist in the plans which show conditions that vary from those encountered in construction, the bidder (if awarded the contract) specifically agrees to construct a completed Work ready for the use and in the manner which is intended.
- 9.6. The bid form must be signed by a person or persons legally authorized to bind bidder to a contract. Bidder's representative must sign and date the declaration of eligibility to contract included in the bid form. Failure to sign and date the declaration may cause the bid to be rejected.

10. BID SECURITY.

- 10.1. Each bid must be accompanied by bid security, in the amount of 10% of the Base Bid Price on the base Contract Work, excluding any Alternate Bid Items, as security for bidder's obligation to enter into a contract with the City on the terms stated in the bid form and to furnish all items required by the bidding documents.
- 10.2. If the apparent lowest responsible bidder fails to sign the contract and furnish all items required by the bidding documents within the time limits specified in these bidding instructions, the City may reject such bidder and select the next apparent lowest responsible bidder until all bids have been exhausted or the City may reject all bids. In the event the bid is rejected, such bidder will be liable for and forfeit to the City the amount of the difference, not to exceed the amount of the bid security, between the amount of the disqualified bid and the larger amount for which the City procures the Work. The City may also use the bid security to cover the cost of rebidding the project.
- 10.3. If a bid bond is submitted and an attorney-in-fact executes the bid bond on behalf of the surety, a notarized and current copy of the power of attorney will be affixed

to the bid bond. The surety issuing the bid bond must be admitted to provide surety within the State of California.

10.4. The City will retain the bid security until the occurrence of one of the following:

10.4.1 All items required by the bidding documents have been furnished and the contract has been signed by the successful bidder and the City.

10.4.2 The specified time has elapsed during which bids may be withdrawn.

10.4.3 All bids have been rejected.

11. BID DELIVERY.

11.1 The bid form, bid security, and all other documents required to be submitted with the bid must be enclosed in a sealed opaque envelope addressed to the City clerk. The envelope shall identify the project name as shown in the notice inviting sealed bids, bidder's name and address, and, if applicable, the designated portion of the project for which the bid is submitted. If the bid is sent by mail, the sealed bid must be enclosed in a separate mailing envelope labeled with the project name as shown in the notice inviting sealed bids and "do not open with regular mail"

11.2 Bids must be deposited at the designated location on or before the bid deadline. A bid received after the bid deadline will be returned to bidder unopened.

11.3 Bidder will assume full responsibility for timely delivery at the location designated for receipt of bids.

11.4 Oral, telephonic, facsimile, electronic or telegraphic bids are invalid and will not be accepted.

12. MODIFICATION OR WITHDRAWAL OF BID.

12.1. Bids may not be modified, withdrawn, or canceled within ninety (90) days after the bid deadline unless otherwise provided in any supplementary instructions to bidders.

13. OPENING OF BIDS.

13.1 Bids submitted in the manner required by these instructions and received on or before the bid deadline will be opened publicly.

14. EVALUATION AND REJECTION OF BIDS.

14.1. Bidders will be evaluated for responsiveness and responsibility based on bid proposal information provided in the bid documents under "designation of subcontractors" and bidder's references."

14.2. A responsive Bid is a Bid that conforms, in all material respects, to these Instructions to Bidders. Non-responsive Bids will be rejected.

- 14.3. A responsible bidder means a bidder who has demonstrated the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform fully the requirements of the Contract Bidding Documents and the moral and business integrity and reliability that will assure good faith performance in the sole discretion of the County. Any determination of a bidder's non-responsibility by the City shall be based on the fitness and capacity of the bidder to satisfactorily perform the obligations of the Contract, whether or not the bidder is qualified to perform those obligations, whether or not the bidder is trustworthy, and such other bases as may be relevant.
- 14.4. In addition to other provisions of the Bidding Documents, upon the request of the City, a bidder whose Bid is under consideration for the award of the Contract shall promptly submit satisfactory evidence to City showing the bidder's financial resources, experience in the field, and organization and other factors evidencing bidder's ability to successfully execute and complete the Contract.
- 14.5. The City reserves the right to reject any or all bids and to waive discrepancies, irregularities, informalities, or any other error in the bid or bidding, when to do so seems to best serve the public interest. The right of the City to waive errors applies even if the Bidding Documents state that a discrepancy, irregularity, informality, or other error make a bid nonresponsive, so long as the error does not constitute a material error. The City reserves the right, in its sole discretion, to: judge the bidder's representations as stated in the Bid forms and any post-Bid information to determine whether or not bidder is qualified to perform the Work; be the sole judge regarding the suitability of the products, services, or supplies offered; to not purchase all items or the full quantity of each item listed in the Bid Item List; reject any or all Bids; waive any deficiencies, irregularities, or informalities in any Bids or in the bidding process; modify, cancel, or withdraw the Notice Inviting Sealed Bids; issue a new Notice Inviting Sealed Bids; suspend or abandon the Project; seek the assistance of outside technical experts in Bid evaluation; require a bidder to provide a guarantee (or guarantees) of the Contract by a third party; and not issue a Notice to Proceed after execution of the Contract. In submitting a Bid in response to the Notice Inviting Sealed Bids, the bidder is specifically acknowledging the City holds these rights. The Notice Inviting Sealed Bids does not commit the City to enter into a Contract, to reject, in its sole discretion, all Bids, nor does it obligate the City pay for any costs incurred by bidders in preparation and submission of a Bid or in anticipation of a Contract. By submitting a Bid, the bidder disclaims any right to be paid for such costs.
- 14.6. The City may reject any bid not accompanied by the required bid security or any other item required by the bidding documents, or a bid which is in any other way materially incomplete, irregular or not responsive to the bid request in the sole determination of the City.

15. AWARD.

- 15.1. The City may retain all bids for a period of ninety (90) days for examination and comparison, and to delete any portion of the Work from the contract.
- 15.2. The City may waive nonmaterial irregularities in a bid and will accept the lowest responsive bid from a responsible bidder as determined by the City.

- 15.3. The City will determine the low bidder on the basis of the total bid price in words on the bidding sheet as described on the bidding sheet.
- 15.4. City Staff will identify the apparent lowest responsive and responsible bidder and notify such bidder within two (2) Working Days (unless the number of days is modified in any Addendum issued to bidders) after the Bid Deadline. Within two (2) Working Days after receiving the City's written notice by email that bidder was identified as the apparent lowest responsible bidder, bidder will submit to the City all of the following items as required by the City:
 - 15.4.1 Two originals of the contract signed by bidder.
 - 15.4.2 One original of the payment bond.
 - 15.4.3 One original of the performance bond.
 - 15.4.4 Certificates of insurance and additional insured endorsements on forms provided by the city.
 - 15.4.5 Copy of current city of goleta business license certificate.
 - 15.4.6 Names of all subcontractors, with their dir registration number, license numbers, addresses, telephone number, facsimile number and trade on bidders' company stationery. Evidence, as required by the city, of the reliability and responsibility of the proposed subcontractors such as statements of experience, statements of financial condition, and references.
- 15.5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. This Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 15.6. If bidder submits the two original signed contracts and all other items within two (2) Working Days after receiving the City's notification, and all such items comply with the requirements of the bidding documents, the City will submit the bid to the City Council for award of Contract. Following City Council Award of Contract, the City will sign the contract and return a signed copy of the contract to bidder.

- 16. NOTICE OF INTENT TO AWARD CONTRACT.** Following the opening of bids and determination of the lowest responsible Bidder, the City will issue a notice of intent to award the Contract, identifying the Bidder to whom the City intends to award the Contract. The award of the Contracts shall be made by the City Council.
- 17. PUBLIC RECORDS.** City seeks to conduct its business openly. Upon identification of the lowest responsive and responsible bidder and upon notifying such bidder, Bids shall be regarded as public, with the exception any elements of each Bid that are identified by the Bidder as business or trade secrets and plainly marked as “trade secret,” “confidential,” or “proprietary.” Each element of a Bid which a Bidder desires not to be considered public must be clearly marked as set forth above; any blanket statement (i.e. regarding entire pages, documents, or other, non-specific designations) shall not be sufficient and shall not bind the City in any way whatsoever. If City receives a request from a third party to make a Bid available for inspection or copying, the City will notify the Bidder of the request. If a Bidder instructs the City that the information is not to be released, City will withhold the information, provided, the Bidder expeditiously seeks a protective order from a court of competent jurisdiction to prevent such release. If disclosure is required by law (despite the Bidder’s request for confidentiality), the City shall not in any way be liable or responsible for the disclosure of such records or part thereof.
- 18. BID PROTEST.** Any registered Bidder may file a protest provided that each and all of the following are complied with:
- 18.1. The bid protest is in writing;
 - 18.2. Protests based upon alleged defects or improprieties in the Bidding Documents are filed with the City prior to the Bid Deadline;
 - 18.3. All other protests are filed and received by the City not more than two (2) calendar days following the date of City’s Notice of Intent to Award the Contract; and
 - 18.4. The written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest. All factual contentions must be supported by competent, admissible and credible evidence.
 - 18.5. Any matters not set forth in the written bid protest shall be deemed waived. Any bid protest not conforming to the foregoing shall be rejected by the City as invalid.

ATTACHMENT A – BIDDING INSTRUCTIONS

EQUAL SUBSTITUTION FORM

Project: _____

Location: _____

TO: _____

FROM: _____

1. Section, Paragraph and Page Number of Specification or Drawing to which this Request applies: _____

2. Item specified for which substitution is requested:

Name or Brand: _____

Manufacturer: _____

Catalog No.: _____

3. The proposed substitution is:

Name or Brand: _____

Manufacturer: _____

Catalog No.: _____

4. Contractor is required to provide product data for the proposed substitution consisting of the description of the product or item, reference standards and performance test data, together with substantiating data, supporting the claim that the non-specified product is equal to that specified. No substitution request will be considered by the City without a completed Substitution Request form and substantiating data. Contractor shall attach hereto complete technical data, including technical information, complete manufacturer's catalogs, brochures and drawings, certified laboratory test reports and samples as applicable for the proposed substitution, installation and operating instructions, manufacturing warranties and other descriptive material.

5. Reasons for substitution request: _____

6. Detailed comparison of significant qualities and properties (size, weight, durability, performance and similar characteristics) including the visual effect where applicable, for the proposed substitution in

comparison with original requirements includes (list detailed comparison with supporting data, use separate sheets if required):

7. Installation changes and changes to Drawings and Specifications required by the proposed substitution are (list all required changes, use separate sheets if required):

8. Does this substitution affect dimensions shown on Drawings?

Yes _____ No _____

If yes, clearly indicate changes on each Drawing by Sheet No.:

9. List the effects of the proposed substitution on other parts of the Work or on separate contracts, including required changes in Drawings, dimensions, engineering and detailing costs and effect on other trades.

10. What effect does substitution have on applicable code requirements?

11. Identify differences between the proposed substitution and the specified item.

12. Attach a copy of manufacturer's warranty, Manufacturer's guarantees and warranties of proposed and specified items are:

Same _____

Different _____
(Explain on attachment.)

Manufacturer shall provide a letter stating the fitness for intended use, and performance equivalence with the specified item.

13. List the name and address of three similar projects (not necessarily installed by Contractor) on which the proposed product was used and date of installation:

(1) Name of Project: _____

Address: _____

Date of Installation: _____

(2) Name of Project: _____

Address: _____

Date of Installation: _____

(3) Name of Project: _____

Address: _____

Date of Installation: _____

14. Use of the substitution will cause the Contract Time to be:

Same _____

Different _____

(Explain on attachment.)

15. Use of the substitution will affect the critical path of the Construction Schedule as follows (identify any proposed adjustment to the Contract Time):

16. Reduction in the Contract Sum of \$ _____ will result from use of the substituted item.

17. Estimated cost of any engineering, design or agency fees required for work of all trades directly or indirectly affected by the substitution is: \$_____.

18. The date by which City must accept this Request in order for the time and cost estimates in Paragraphs 14 and 16 to remain valid is:

19. _____.
Contractor Affidavit. The undersigned, having thoroughly investigated the proposed substitution represents, certifies and declares, under penalty of perjury under the laws of the State of California that:

- (1) Contractor has personally investigated the proposed substitution and determined that it is equal or superior in all respects to the material, product, thing or service specified except as specifically noted: _____;
- (2) Contractor will provide the same warranty and correction responsibility for the proposed substitution that the Contractor would have provided for that specified;
- (3) The cost data presented is complete and includes all related costs under this Contract except any redesign costs and agency fees;
- (4) Contractor will indemnify City from and pay all redesign, engineering, detailing, special inspection costs and agency fees caused by the use of this substitution;
- (5) Contractor will coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects.
- (6) Contractor waives all claims for additional costs relating to the substitution which may subsequently become apparent; and
- (7) Contractor assumes all responsibility for and will indemnify City from and pay all direct or indirect costs and/or time impacts as a result of the use of the substitution.

SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA 4308

Executed this _____ day of _____ 20__, at _____, California.

(Type or print name)

Submitted by:

(Firm)

(Address)

For use by City:

___ Accepted ___ Accepted as noted

___ Not Accepted ___ Rejected as late

(By)

(Date)

This Page Intentionally Left Blank

SECTION C PROPOSAL

BID PROPOSAL FOR SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA 4308

TO THE CITY OF GOLETA ("City"):

In accordance with City's Notice Inviting Sealed Bids, the undersigned Bidder hereby proposes to furnish all materials, equipment, tools, labor, and incidentals required for the **San Jose Creek Channel Emergency Repair Project – PROJECT NO. FEMA 4308** as set forth in the Plans, Specifications, and Contract Documents, and to perform all Work in the manner and time prescribed therein.

Bidder declares that this Bid is based upon careful examination of the Work site, Plans, Specifications, Bidding Instructions, and all other Contract Documents. If this Bid is accepted for award, Bidder agrees to enter into a contract with City at the unit and/or lump sum prices set forth in the following Bid Schedule. Bidder understands that failure to enter into a contract in the manner and time prescribed will result in forfeiture to City of the Bid Security accompanying this Bid.

Bidder understands that a Bid is required for the entire Work, that the estimated quantities set forth in the Bid Schedule are solely for the purpose of comparing Bids, and that final compensation under the Contract will be based upon the actual quantities of Work satisfactorily completed. THE CITY RESERVES THE RIGHT TO INCREASE OR DECREASE THE AMOUNT OF ANY QUANTITY SHOWN AND TO DELETE ANY ITEM FROM THE CONTRACT. If the work is increased or decreased, the contract price will be adjusted accordingly. It is agreed that the unit and/or lump sum prices bid include all overhead, profit, appurtenant expenses, taxes, royalties, and fees. In the case of discrepancies in the amounts bid, unit prices shall govern over extended amount, and words shall govern over figures.

If awarded the Contract, the undersigned further agrees that in the event of the Bidder's default in executing the Contract and filing the necessary bonds and insurance certificates WITHIN TWO (2) WORKING DAYS, after the City has provided written notice of the award of contract to the Bidder, the proceeds of the Bid Security accompanying this Bid shall become the property of the City and this Bid and the acceptance hereof may, at the City's option, be considered null and void.

This Page Intentionally Left Blank

**BID PROPOSAL
FOR
SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA
4308**

Bids will be received before **3:00 P.M., Tuesday, September 12, 2017**, at the City of Goleta, City Hall Building, 130 Cremona Drive, Suite B, Goleta, CA 93117.

Questions regarding the Contract Documents, Specifications, Proposal or other Bidding Documents, shall be submitted in writing and emailed to rwoodward@cityofgoleta.org.

The Project insurance requirements are per the Caltrans Standard Specifications, as modified by the City General Provisions contained herein.

Contract Time: Fifteen (15) Working Days. Time is of the essence in the performance of this contract

BIDDER SHALL COMPLETE:

Bidder's Name _____

Street Address _____

City _____ State _____ Zip Code _____

Telephone Number _____ Fax Number _____

E-mail _____

The following Addenda are	Number	Dated	Initials
acknowledged:			
(Bidder must fill in number and date of	_____	_____	_____
each Addendum or may enter the word	_____	_____	_____
"none" if appropriate)	_____	_____	_____

BIDDERS Signature

DATE

Tax I.D. Number

This Page Intentionally Left Blank

**SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA
4308**

BIDDING SHEET (Page 1 of 2)

The cost of all labor, material and equipment necessary for the completion of the work itemized, even though not shown or specified, shall be included in the unit or lump sum prices for the various items shown herein.

The City further reserves the right to reject any or all bids, to waive any informality or irregularity in any bid or the bidding procedure, and to delete any items of work in the award of contract. The City's decision on the bid amount is final.

Bidders must bid on all items in the Bid Schedule including the Supplemental and/or Alternative Bid Items in order for their bids to be complete. The award of contract will be based on the lowest responsive Base Bid only.

In the case of unit basis items, the amount set forth under the "Item Total" column (total base bid in words) shall be the product of the unit price bid and the estimated quantity for the item.

Bids on lump sum items are item totals. If a unit price of a lump sum item is entered and it differs from the item total, the item total prevails.

Entries are to be expressed in dollars or decimal fractions of a dollar. Symbols such as commas and dollar signs are ignored and have no significance in establishing unit price or item total.

Unit prices and item totals are interpreted by the number of digits and decimal placement. Do not round item totals or the total bid.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price prevails, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount of the entry in the item total column, then the amount set forth in the item total 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;
- (b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the City's Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Bid comparison are prescribed in Section 2-1.33B of the Standard Specification as amended by City's General Provisions.

This Page Intentionally Left Blank

BIDDING SHEET (Page 2 of 2)**BASE BID SCHEDULE**

ITEM NO	DESCRIPTION	UNIT	QTY		UNIT PRICE		TOTAL
1	CONSTRUCTION AREA SIGNS	LS	1	\$		\$	
2	JOB SITE MANAGEMENT	LS	1	\$		\$	
3	PREPARE WATER POLLUTION CONTROL PROGRAM	LS	1	\$		\$	
4	REMOVE EXISTING ARTICULATED SLOPE REVETMENT (ASR) : QUANTATY TO BE FIELD-VERIFIED BEFORE STARTING WORK	SF	1,400	\$		\$	
5	SALVAGE AND REINSTALL METAL BEAM GUARD RAIL AND CHAIN LINK FENCE	LS	1	\$		\$	
6	SALVAGE CRUSHED ROCK: MIX WITH ROCK SLOPE PROTECTION: WEST-SIDE ACCESS ROAD	LS	1	\$		\$	
7	CHANNEL EXCAVATION: 2.5- FEET DEEP BELOW BOTTOM OF ASR X 50 FEET WIDE X 112 FEET LONG	CY	519	\$		\$	
8	PARKING LOT REPAIR	LS	1	\$		\$	
9	SOIL ANCHORS	EA	102	\$		\$	
10	FURNISH AND DRIVE SHEET PILE (8 FT DEEP X 50 FEET WIDE) PS27.5 or "heavier": May be "good used grade" Material is A572-50	SF	400	\$		\$	
11	CONSTRUCTION JOINT BETWEEN ASR AND SHEET PILE	LS	1	\$		\$	
12	ROCK SLOPE PROTECTION (1/4 TON, METHOD A) : 3-FEEP DEEP X 112 FEET LONG X 50 FEET WIDE	CY	622	\$		\$	
13	ROCK SLOPE PROTECTION FABRIC - CLASS 8 (60 FEET WIDE X 120 FEET LONG)	SF	7,200	\$		\$	
14	MISCELANEOUS METAL: ASR TIE DOWN CONNECTION	EA	102	\$		\$	
15	MISCELANEOUS METAL: HYDRAULIC TRANSITION BAFFLE (ON EXISTING CONCRETE CHANNEL LINING)	EA	20	\$		\$	
16	MOBILIZATION	LS	1	\$		\$	
TOTAL BASE BID						\$	

(Total Bid in Words)

Company Name of Bidder

This Page Intentionally Left Blank

PROPOSED EQUIPMENT AND MATERIAL MANUFACTURERS

The Bidder must indicate the name of the manufacturer of the equipment, and supplier of the material, proposed to be furnished under the contract. Awarding of a contract based on this bid does not imply approval by the City of the manufacturers or suppliers listed by the Bidder. No substitution will be permitted after award of contract except upon written approval of the City.

Equipment/Materials	Supplier
1. Portland Cement Concrete	
2. Soil Anchors	
3. Sheet Pile	
4. Rock Slop Protection (1/4 Ton)	
5. Miscellaneous Metal Tranistion Baffle	
6. Miscellaneous Metal: ASR Tie-Down Connection	

This Page Intentionally Left Blank

DESIGNATION OF SUBCONTRACTORS

Bidder proposes to subcontract certain portions of the Work which are in excess of one-half of one percent (0.5%) of the total amount base bid or \$10,000, whichever is greater, and to procure materials and equipment from suppliers and vendors.

These Subcontractors are identified as follows:

Work to be Performed	Subcontractor License Number	Subcontractor DIR Registration Number (Note1)	Percent of Total Bid	Subcontractor's Name & Address

Note 1: Bidders have 24 hours after the Bid Deadline to submit this information

This Page Intentionally Left Blank

BIDDER'S REFERENCES

The following are the names, addresses, and phone numbers for three public agencies for which Bidder has performed projects of the same magnitude and character of the work bid within the past three years:

1. Name of Agency _____
Agency Address _____
Telephone _____
Contact Person _____
Contract Amount _____

2. Name of Agency _____
Agency Address _____
Telephone _____
Contact Person _____
Contract Amount _____

3. Name of Agency _____
Agency Address _____
Telephone _____
Contact Person _____
Contract Amount _____

The following are the names, addresses, and phone numbers for all brokers and sureties from whom Bidder intends to procure insurance bonds:

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Bidder certifies that in all previous contracts or subcontracts, all reports which may have been due under the requirements of any local, State, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

This Page Intentionally Left Blank

ELIGIBILITY TO CONTRACT

The successful Bidder is prohibited from performing work on this Project with a Subcontractor who is ineligible to perform work on the Project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

BIDDER'S INFORMATION

Bidder certifies that the following information is true and correct:

Bidder's Name _____

Business Address _____

Telephone _____

State Contractor's License No. and Class _____

Original Date Issued _____ Expiration Date _____

DIR Registration No: _____

The following are the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint venturers, and/or corporate officers having a principal interest in this Bid:

The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this Bid are as follows:

All current and prior DBA's, alias, and/or fictitious business names for any principal having an interest in this Bid are as follows:

I declare under penalty of perjury under the laws of the State of California that the above representations are true and correct. Executed this _____ day of _____, 201_, at _____ California.

Signature and Title of Bidder
or Authorized Representative

(SEAL)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

This Page Intentionally Left Blank

**BID BOND
FOR
SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA
4308**

KNOW ALL PERSONS BY THESE PRESENTS that [Bidder] _____
_____ as PRINCIPAL, and _____,
a corporation organized under the laws of the State of _____ and
licensed by the State of California to execute bonds and undertakings as sole surety, as
SURETY, are held and firmly bound unto the City of Goleta, as City, in the penal sum of
ten percent (10%) of the total Base Bid Price on the base Contract Work, **excluding** any
Alternate Bid Items submitted by PRINCIPAL to CITY for the above stated project, for the
payment of which sum, PRINCIPAL and SURETY agree to be bound, jointly and severally,
firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, whereas PRINCIPAL has
submitted a proposal to CITY for the above stated project.

NOW, THEREFORE, the penal sum guaranteed by this bond shall be forfeited to the City in
the event of any of the following: (1) The aforesaid Principal withdraws said bid after the Bid
Deadline contrary to applicable law; or (2) Principal fails, within ten (10) business days after
receipt of written notice that the contract has been awarded to Principal and tender of the
Contract, to, deliver to City the executed Agreement, in the prescribed form, in accordance
with the bid as accepted, and file with the City all documents required in section 3-1.18 of the
City's General Provisions.

In case suit is brought upon this bond, SURETY further agrees to pay all reasonable attorneys'
fees and costs incurred by CITY in an amount fixed by the court. SURETY hereby waives the
provisions of California Civil Code Sections 2845 and 2849.

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals this
_____ day of _____, 201__.

PRINCIPAL: _____

(Address) _____

BY: _____
(Signature and Title of Authorized Officer)

BY: _____
(Signature and Title of Authorized Officer)

SURETY: _____

(Address) _____

BY: _____
(Signature and Title of Authorized Officer)

BY: _____
(Signature and Title of Authorized Officer)

Note: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment. Also, evidence of the authority of any person signing as attorney-in-fact must be attached.

**STATEMENT ACKNOWLEDGING PENAL AND CIVIL PENALTIES
CONCERNING THE CONTRACTOR'S LICENSING LAWS**

[Business & Professions Code § 7028.15; Public Contract Code § 20103.5]

The undersigned, a duly authorized representative of the Bidder, certify that I am aware of the provisions of California law and that I, or the company/individual on whose behalf this Bid is being submitted, hold a currently valid California contractor's license as set forth in the Business and Professions Code § 7028.15 and Public Contract Code § 20103.5 (and any updates).

A contractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

Bidder: _____

License No.: _____ Class _____ Expiration date: _____

DIR Registration No.: _____

Date _____ Signature _____

This Page Intentionally Left Blank

DECLARATION OF ELIGIBILITY TO CONTRACT
[Labor Code §§ 1777.1 and 1777.7; Public Contract Code § 6109]

The undersigned, a duly authorized representative of the Bidder, certifies and declares that:

1. The Bidder is aware of Sections 1771.1 and 1777.7 of the California Labor Code, which prohibit a contractor or subcontractor who has been found by the Labor Commissioner or the Director of Industrial Relations to be in violation of certain provisions of the Labor Code, from bidding on, being awarded, or performing work as a subcontractor on a public works project for specified periods of time.
2. The Bidder is not ineligible to bid on, be awarded or perform work as a subcontractor on a public works project by virtue of the foregoing provisions of Sections 1771.1 or 1777.7 of the California Labor Code or any other provision of law.
3. The Bidder is aware of California Public Contract Code Section 6109 (and any updates.)
4. The Bidder has investigated the eligibility of each and every subcontractor the contractor intends to use on this public works project, and determined that none of them is ineligible to perform work as a subcontractor on a public works project by virtue of the foregoing provisions of the Public Contract Code, Sections 1771.1 and 1777.7 of the Labor Code, or any other provision of law.
5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____, 201_, at _____, California.

Signature: _____

Name: _____

Title: _____

Name of Company: _____

Note: Signature must be acknowledged before a notary public. Attach appropriate acknowledgment.

This Page Intentionally Left Blank

**NON-COLLUSION DECLARATION
FOR
SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA
4308**

I am the _____ [title] of _____ [name of bidder], the party making the foregoing bid, declares 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, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on

_____ [date], at _____ [city], _____ [state]

(Signature and Title of Authorized Representative)

This Page Intentionally Left Blank

SECTION D

CONTRACT AWARD AND EXECUTION

CONTRACT

PERFORMANCE BOND FORM

PAYMENT BOND FORM

This Page Intentionally Left Blank

SAMPLE CONTRACT

CONSTRUCTION CONTRACT FOR THE SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA 4308 BETWEEN THE CITY OF GOLETA AND _____

This Construction Contract (“Contract”) is made and entered into for the above stated project this ____ of _____, 2017, by and between the City of Goleta (“City”) and _____, (“Contractor”).

1. Contract Documents.

“Contract Documents” means the Notice Inviting Sealed Bids; Bidding Instructions; Supplementary Instructions to Bidders; Bid Proposal; this Contract; Standard Specifications; Supplementary Conditions; Exhibits; Technical Specifications; List of Drawings; Drawings; Addenda; Change Orders; and all other documents identified in the Contract Documents which together form the contract between the City and the Contractor for the Work.

2. Work.

For and in consideration of the payments and agreements to be made and performed by City, Contractor agrees to furnish all materials and perform all work required for the Project, and to fulfill all other obligations as set forth in the Contract Documents (“Work”).

3. Contract Amount.

The City agrees to pay the Contractor a sum not to exceed _____ dollars (\$_____) for the Work in the manner set forth in the Contract Documents. The City may adjust this amount as set forth in the Contract Documents.

4. Time for Performance.

- 4.1 The Contractor will fully complete the Work within **fifteen (15)** working days (the “Contract Time”).
- 4.2. The Contract Time will commence when the City issues a notice to proceed. The Contract Documents will supersede any conflicting provisions included on the notice to proceed issued pursuant to this Contract.
- 4.3 The Contractor shall not perform any Work until:
 - i. The Contractor furnishes proof of insurance as required by the Contract Documents; and
 - ii. The City issues the Contractor a notice to proceed.
- 4.4 Should the Contractor begin the Work before receiving written authorization to proceed, any such Work is at the Contractor’s risk.

5. Labor Practices.

- 5.1 Contractor acknowledges that this Contract is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing the Section 1720) of the California Labor Code relating to public works and public agencies and agrees to be bound by all the provisions thereof as though set forth in full herein. The California prevailing rates of per diem wages are on file in the office of the City Clerk.
- 5.2 Contractor agrees to comply with the provisions of California Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Contractor shall, as a penalty to the City, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Contract by Contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.
- 5.3 Contractor agrees to comply with the provisions of California Labor Code Section 1777.5 concerning the employment of apprentices on Public Works Department projects, and further agrees that Contractor is responsible for compliance with Section 1777.5 by all of its Subcontractors.
- 5.4 Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Except as provided by Labor Code Section 1815, the Contractor shall, as a penalty to the City, forfeit twenty five dollars (\$25) for each worker employed in the execution of the Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 (commencing at Section 1810) of the California Labor Code.
- 5.5 In accordance with California Labor Code Sections 1860 and 3700, every contractor is required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor, by signing this Contract, certifies that Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the work of this Contract.
- 5.6 Contractor agrees to comply with the provisions of California Labor Code Section 1776 concerning the creation, retention, and inspection of payroll records, and further agrees to be responsible for compliance with Section 1776 by all of its Subcontractors.

6. Insurance.

6.1 Insurance Requirements. CONTRACTOR shall provide and maintain insurance, acceptable to the City Manager and City Attorney, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII. CONTRACTOR shall provide the following scope and limits of insurance:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.
- (3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the CONTRACTOR and all risks to such persons under this AGREEMENT.

B. Minimum Limits of Insurance. CONTRACTOR shall maintain limits of insurance no less than:

- (1) General Liability: \$2,000,000 general aggregate for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

6.2 Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

A. All Policies. Each insurance policy required by this paragraph shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City.

B. General Liability and Automobile Liability Coverages.

- (1) CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONTRACTOR performs; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials, or employees.
 - (2) CONTRACTOR's insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONTRACTOR's insurance.
 - (3) CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.
- C. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against CITY, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONTRACTOR.
- 6.3 Other Requirements. CONTRACTOR agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City may require that CONTRACTOR furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect complete, certified copies of all required insurance policies, at any time.
- A. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

- B. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT

7. Independent Contractor.

Contractor is and shall at all times remain as to the City, a wholly independent contractor. Neither the City nor any of its agents shall have control of the conduct of Contractor or any of the Contractor's employees, except as herein set forth. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of City.

8. Permits and Licenses

CONTRACTOR , at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates, including a CITY business license, that may be required in connection with the performance of services under this AGREEMENT.

9. Taxes.

The Contractor is responsible for paying all retail, sales and use, transportation, export, import, special, or other taxes, licenses, and duties applicable to, and assessable against any work, materials, equipment, services, processes and operations incidental to or involved in this Contract. The Contractor is responsible for ascertaining and arranging to pay them. The prices established in this Contract shall include compensation for any taxes the Contractor is required to pay by laws and regulations in effect on the bid opening date.

10. Notices.

All notices and communications shall be sent to the parties at the following address:

CITY: Michelle Greene, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

CONTRACTOR: _____

11. Ownership of Documents.

All documents, data, studies, drawings, maps, models, photographs and reports prepared by the Contractor under the Contract Documents are the City's property. The Contractor may retain copies of such documents and materials as desired, but will deliver all original materials to the City upon the City's written notice.

12. Audit of Records.

At any time during normal business hours and as often as it may deem necessary, Contractor shall make available to a representative of City, grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives for examination of all its records, to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions, with respect to all matters covered by this

Contract and will permit City to audit, examine and/or reproduce such records. Contractor will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least three years after termination or final payment under this Contract.

13. Indemnification.

Contractor agrees to defend, indemnify and hold harmless City and all of its officers, employees and agents from any liability, financial loss, claims, demands, or causes of action, including but not limited to related expenses, attorney's fees and costs, based on, arising out of, or in any way related to the work undertaken by Contractor or any person employed by Contractor or its agents. Nothing in this section shall narrow the indemnification provisions contained in the City's Standard Specifications.

14. Assignment.

This Contract is not assignable nor the performance of either party's duties delegable without the prior written consent of the other party. Any attempted or purported assignment or delegation of any or the rights of obligations of either party without the prior written consent of the other shall be void and of no force and effect.

15. Integration.

This Contract supersedes any and all other agreements either oral or written, between the parties and contains all of the covenants and agreements between the parties pertaining to the work of improvements described herein. Each party to this Contract acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statements or promise not contained in this Contract shall not be valid or binding.

16. Authority/Modification.

The parties represent and warrant that all necessary action has been taken by the parties to authorize the undersigned to execute this Contract and to engage in the actions described herein. This Contract may be modified by written amendment.

17. Interpretation.

This Contract was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this Contract will be in Santa Barbara County.

18. Severability.

If any portion of the Contract Documents are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Contract will continue in full force and effect.

19. Captions.

The captions of the sections of this Contract are for convenience of reference only and will not affect the interpretation of this Contract.

20. Termination

Consistent with 24 CFR 570.503(b)(6), suspension or termination may occur if the subrecipient (Contractor) materially fails to comply with any term of the CDBG award, and that the agreement may also be terminated for convenience (also see 24 CFR 85.43–85.44 and 84.62).

21. Cost Principles

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Contractor to the City.

The City, its agencies or instrumentalities, and subrecipients (Contractor) shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-128² (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at §570.502

22. Disadvantaged Business Enterprises (DBE) Participation

For the Scope of Work, City has a Disadvantaged Business Enterprise (DBE) goal of 4.00%. Contractor is required to submit to City completed Caltrans Form 10-01 reflecting the DBE commitment by Contractor. Contractor to submit Caltrans Form 10-02 Contractor Contract DBE Information to the City prior to contract award.

Contractor is required to include in applicable Subcontracts the DBE contract language show in the attached Exhibit Standard Agreement for Subcontractor/DBE Participation (Exhibit C).

A DBE may be terminated only with written approval by City and only for the reasons specified in 49 CFR 26.53 (f). Prior to requesting City's consent for the proposed termination, the prime Contractor must meet the procedural requirements specified in 49 CFR 26.53(f).

23. Contingent Fee

The Contractor warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

24. Retention of Records/Audit

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., Federal regulations specified in OMB Circulars A-21, A-87 and A-122, as applicable, and 24 CFR 570.502, 24 CFR 570.506, Subpart K of 24 CFR Part 570, and 24 CFR 84.21-28 that are pertinent to the Project and activities to be funded under this acknowledgement, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; the Contractor, subcontractors, and the City shall maintain and retain - for five years after grantees or subgrantees make final payments and all other pending matters are closed - all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for five years from the date of final payment under the contract. The state, the State Auditor, City, CDBG, HUD, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Contractor that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested Subcontracts in excess of \$2,000 shall contain this provision.

25. Disputes

Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the City's Project Manager and Public Works Director, who may consider written or verbal information submitted by the Contractor.

Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, the Contractor may request review by the City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

Neither the pendency of a dispute, nor its consideration by the committee will excuse the Contractor from full and timely performance in accordance with the terms of this contract.

26. Audit Review Procedures

Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the City's Chief Financial Officer.

Not later than 30 days after issuance of the final audit report, the Contractor may request a review by the City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by the City will excuse the Contractor from full and timely performance, in accordance with the terms of this contract.

27. Equipment Purchase

Prior authorization in writing, by the City's Project Manager shall be required before the Contractor enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for

supplies, equipment, or Contractor services. The Contractor shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in the Contractor's Cost Proposal and exceeding \$5,000 prior authorization by the City's Contract Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "The Contractor shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the City shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the Contractor may either keep the equipment and credit the City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit the City in an amount equal to the sales price. If the Contractor elects to keep the equipment, fair market value shall be determined at the Contractor's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the City and the Contractor, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the City." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

28. Inspection of Work

The Contractor and any subcontractor shall permit the City, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis

29. Safety

The Contractor shall comply with OSHA regulations applicable to Contractor regarding necessary safety equipment or procedures. The Contractor shall comply with safety instructions issued by the City Safety Officer and other City representatives. Contractor personnel shall wear hard hats and safety vests at all times while working on the project site.

Pursuant to the authority contained in Section 591 of the Vehicle Code, the City has determined that such areas are within the limits of the project and are open to public traffic. The Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The Contractor shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

30. Ownership of Data

Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the City; and no further agreement will be necessary to transfer ownership to the City. The Contractor shall furnish the City all necessary copies of data needed to complete the review and approval process.

It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

The Contractor is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the City of the machine-readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities, or losses arising out of, or connected with any use by the City of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by the Contractor.

Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

The City may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

Any subcontract in excess of \$2,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

31. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical, or other data and information relative to the City's operations, which are designated confidential by the City and made available to the Contractor in order to carry out this contract, shall be protected by the Contractor from unauthorized use and disclosure.

Permission to disclose information on one occasion, or public hearing held by the City relating to the contract, shall not authorize the Contractor to further disclose such information, or disseminate the same on any other occasion.

The Contractor shall not comment publicly to the press or any other media regarding the contract or the City's actions on the same, except to the City's staff, Contractor's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

The Contractor shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the City, and receipt of the City's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

All information related to the construction estimate is confidential, and shall not be disclosed by Contractor to any entity other than City.

32. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, the Contractor hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period, because of the Contractor's failure to comply with an order of a federal court that orders the Contractor to comply with an order of the National Labor Relations Board.

33. EVALUATION OF CONTRACTOR

The Contractor's performance will be evaluated by the City. A copy of the evaluation will be sent to the Contractor for comments. The evaluation together with the comments shall be retained as part of the contract record.

34. NON DISCRIMINATION

The Contractor, its contractors and subcontractors agree to comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR, Part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities, the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) which requires certain federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people, and the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225).

35. DEBARMENT AND SUSPENSION CERTIFICATION

The Contractor's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Contractor has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter

involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

36. STATE PREVAILING WAGE RATES

The Contractor shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.

37. CONFLICT OF INTEREST

The Contractor shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this contract, or any ensuing City construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

The Contractor hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

The Contractor hereby certifies that neither Contractor, nor any firm affiliated with the Contractor will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

38. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The Contractor warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

This is in compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).

39. EQUAL EMPLOYMENT OPPORTUNITY

Contractor agrees to the following:

(a) Acknowledgement Subject to Executive Order 11246: Recipient Department hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60 which is paid for in whole or in part with funds obtained from the Oversight Department, the following equal opportunity clause:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin. The Contractor will take affirmative action to insure that applicants are employed, without regard to race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the municipality setting forth the provisions of this nondiscrimination clause.

(2) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin.

(3) The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The Contractor shall incorporate or cause to be incorporated the foregoing provisions into any subcontract for work covered by this acknowledgement so that such provision will be binding upon each subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

(b) Acknowledgement Subject to Provisions of 24 CFR 135. The Contractor and its subcontractors shall be responsible for complying with the provisions of 24 CFR, Part 135, also known as Section 3, Employment opportunities for business and lower income persons in connection with assisted projects, a copy of which is on file with the Oversight Department which will be duplicated for Contractor upon request.

To the extent that they are otherwise applicable, City and Contractor shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and

Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60;

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONTRACTOR

Michelle Greene, City Manager

By/Title

ATTEST:

Deborah S. Lopez, City Clerk

By/Title

APPROVED AS TO FORM

Contractor's License No.

Winnie Cai, Deputy City Attorney

Contractor's DIR No.

This Page Intentionally Left Blank

**PERFORMANCE BOND
FOR
SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA
4308**

_____ (“PRINCIPAL”), and _____,
a corporation organized under the laws of the State of _____ and licensed
by the State of California to execute bonds and undertakings as sole surety (“SURETY”), are
held and firmly bound unto the CITY OF GOLETA (“CITY”) in the sum of
_____ dollars, \$_____)
(100% of amount bid in proposal) lawful money of the United States, which may be increased
or decreased by a rider hereto executed in the same manner as this bond, for the payment of
which sum PRINCIPAL and SURETY bind themselves, their successors, and assigns, jointly
and severally, by this instrument.

PRINCIPAL or SURETY will apply this bond for the faithful performance of any and all of the
conditions and stipulations set forth in this bond, and the Public Works contract (“Contract”)
executed by CITY and PRINCIPAL, which Contract and all Contract Documents are
incorporated herein. In the case of any default in the performance of the conditions and
stipulations of this undertaking, it is agreed that PRINCIPAL or SURETY will apply the bond or
any portion thereof, to the satisfaction or any damages, assessments, penalties, or
deficiencies arising by reason of such default.

BOND CONDITIONS

1. PRINCIPAL will construct the public improvements (“Project”) identified in the Contract. Such performance will be in accordance with the Contract Documents identified in the Contract, which are hereby incorporated and made a part of this bond. City has estimated the required amount of the bond as shown above.
2. PRINCIPAL’s work on the Project will be done in accordance with the Contract Documents. Should PRINCIPAL fail to complete all required work within the time allowed, CITY may, at its sole discretion, cause all required work to be done and the parties executing the bond will be firmly bound for the payment of all necessary costs therefor.
3. Subject to and without limiting the terms of the Contract, PRINCIPAL will guarantee its work against any defective work, labor or materials on the Project and correct all defective work without charge to the City for a period of at least one (1) year following the Project’s completion and acceptance by CITY.
4. This bond guarantees Contractor’s due compliance with all applicable law including, without limitation, the Goleta Municipal Code (“GMC”).
5. SURETY, for value received, agrees that no changes, extensions of time, alteration or modification of the Contract or of the obligations to be performed thereunder will in any way affect its obligation on this bond, and waives notice of any such change, extension of time, alteration or modification of the Contract or of the obligations to be performed.

Furthermore, SURETY expressly waives the provisions of California Civil Code Sections 2845 and 2849.

6. This bond consists of this instrument; the Contract and Contract Documents referenced above; and the following two (2) attached exhibits all of which are incorporated herein by reference:
 - A. A certified copy of the appointment, power of attorney, bylaws or other instrument entitling or authorizing the persons executing this bond to do so; and
 - B. A certificate issued by the county clerk for the county in which SURETY's representative is located conforming with California Code of Civil Procedure § 995.640 and stating that SURETY's certificate of authority has not been surrendered, revoked, cancelled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.
7. In the event suit is brought upon this bond by City and judgment is recovered, Surety shall pay all costs incurred by City in such suit, including a reasonable attorneys' fee to be fixed by the Court. Principal and Surety agree that this Performance Bond shall not be considered a part of the Contract. Principal and Surety further agree that this Performance Bond is a separate obligation of the Principal and its Surety, and that any attorneys' fee provision contained in this Performance Bond shall not apply to the Contract. In the event there is any litigation between the parties arising from the breach of the Contract, each party will bear its own attorneys' fees in the litigation. Death of the Principal shall not relieve Surety of its obligations hereunder.
8. Should PRINCIPAL perform its obligations within the time allowed, PRINCIPAL's obligation will be void upon the acceptance of the performance by CITY; otherwise this obligation will remain in full force and effect.

SIGNED AND SEALED this _____ day of _____, 201__.

PRINCIPAL:

SURETY:

PRINCIPAL's MAILING ADDRESS:

SURETY's MAILING ADDRESS:

(Signature of authorized officer)

(Signature of authorized officer)

(Name and Title)

(Name and Title)

(Signature of authorized officer)

(Signature of authorized officer)

(Name and Title)

(Name and Title)

NOTE: ALL signatures must be acknowledged by a notary public. Attach the appropriate acknowledgement form. Also, attach evidence of the authority of any person signing as attorney-in-fact.

This Page Intentionally Left Blank

**PAYMENT BOND
FOR
SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT – PROJECT NO. FEMA
4308**

The City of Goleta ("CITY") has awarded to _____ as Contractor (hereafter as "PRINCIPAL"), a contract ("Contract") for the above stated project. PRINCIPAL is required to furnish a bond in connection with such Contract, to secure the payment of claims of laborers, mechanics, material persons, and other persons as provided by law.

PRINCIPAL and _____, a corporation incorporated under the laws of the State of _____ and licensed by the State of California to execute bonds and undertakings as sole surety ("SURETY"), are held and firmly bound unto the CITY in the sum of _____ (\$_____) dollars, (100% of amount bid in proposal), lawful money of the United States, which may be increased or decreased by a rider hereto executed in the same manner as this bond, for the payment of which sum PRINCIPAL and SURETY bind themselves, their successors, and assigns, jointly and severally, by this instrument.

BOND CONDITIONS

1. PRINCIPAL will construct the public improvements ("Project") identified in the Contract. Such performance will be in accordance with the Contract Documents identified in the Contract, which are hereby incorporated and made a part of this bond. City has estimated the required amount of the bond as shown above.
2. If PRINCIPAL, its heirs, executors, administrators, successors, assigns or subcontractors, shall fail to pay any of the persons named in Section 9100 of the California Civil Code, or any amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to work or labor performed under the Contract, SURETY will pay for the same in an amount not exceeding the penal sum specified in this bond.
3. This bond shall inure to the benefit to any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond. In case suit is successfully brought upon this bond, SURETY further agrees to pay all reasonable attorneys' fees and costs in an amount fixed by the court.
4. SURETY, for value received, agrees that no changes, extensions of time, alteration or modification of the Contract or of the obligations to be performed thereunder will in any way affect its obligation on this bond, and waives notice of any such change, extension of time, alteration or modification of the Contract or of the obligations to be performed. Furthermore, SURETY expressly waives the provisions of California Civil Code Sections 2845 and 2849.

5. This bond consists of this instrument; the Contract and Contract Documents referenced above; and the following two (2) attached exhibits all of which are incorporated herein by reference:
 - A. A certified copy of the appointment, power of attorney, bylaws or other instrument entitling or authorizing the persons executing this bond to do so; and
 - B. A certificate issued by the county clerk for the county in which SURETY's representative is located conforming with California Code of Civil Procedure § 995.640 and stating that SURETY's certificate of authority has not been surrendered, revoked, cancelled, annulled, or suspended, or in the event that it has, that renewed authority has been granted.
6. Should PRINCIPAL perform its obligations within the time allowed, PRINCIPAL's obligation will be void upon the acceptance of the performance by CITY; otherwise this obligation will remain in full force and effect.

[Signatures on the following page]

SIGNED AND SEALED this _____ day of _____, 201__.

PRINCIPAL:

SURETY:

PRINCIPAL's MAILING ADDRESS:

SURETY's MAILING ADDRESS:

(Signature of authorized officer)

(Signature of authorized officer)

(Name and Title)

(Name and Title)

(Signature of authorized officer)

(Signature of authorized officer)

(Name and Title)

(Name and Title)

NOTE: ALL signatures must be acknowledged by a notary public. Attach appropriate acknowledgement form.
Also, attach evidence of the authority of any person signing as attorney-in-fact

This Page Intentionally Left Blank

SECTION E

CITY GENERAL PROVISIONS

The work provided herein shall be performed in accordance with the State of California Department of Transportation Standard Specifications 2010 edition (Standard Specifications). The Standard Specifications is as amended by Caltrans Standard Special Conditions and amendments in effect as of the Bid Deadline are incorporated herein by reference, as deleted or supplemented by the Contract Documents.

ORDER OF PRECEDENCE

In the event of conflicts or discrepancies between the Contract Documents, the provision placing a more stringent requirement on the Contractor shall prevail. The Contractor shall provide the better quality or greater quantity of Work and/or materials, unless otherwise directed by Owner in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Contractor, the controlling provision shall be that which is found in the document with higher precedence.

The governing ranking of Contract parts in descending order is:

1. Permits and other governmental approvals;
2. Change orders and Construction Change Directives, issued after execution of the Agreement
3. Agreement/Contract; including all attachments and Addenda with later Addenda having priority over earlier Addenda
4. City Special provisions
5. City General Provisions
6. Project plans
7. Caltrans Standard Special Provisions for 2010 Standard Specifications
8. Caltrans Revised standard specifications
8. Caltrans Standard specifications
9. Caltrans Revised standard plans
- 1.8. Standard plans
- 1.9. Supplemental project information
- 1.10 Written numbers and notes on a drawing govern over graphics
- 1.11 A detail drawing governs over a general drawing
- 1.12 A detail specification governs over a general specification
- 1.13 A specification in a section governs over a specification referenced by that section

If a discrepancy is found or confusion arises, submit a Request for Information (RFI.)

MODIFICATIONS TO STANDARD SPECIFICATIONS

The following modifications shall be made to the Caltrans Standard Specifications and are incorporated into the Contract:

DIVISION I GENERAL PROVISIONS

1 GENERAL

1-1.01B Severability.

In the event any Article, Section, Sub-article, Paragraph, Subparagraph, sentence, clause or phrase contained in the Contract Documents shall be deemed, determined, declared or adjudged invalid, illegal, unconstitutional, void or otherwise unenforceable such provision or clause shall be deemed to be severed and deleted from the Contract Documents and all remaining provisions shall continue in full force and effect.

1-1.01C Provisions Deemed Inserted.

Each and every provision of law and clause required to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause is included herein, and if through mistake, or otherwise, any such provision is not inserted or not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

1-1.01D Neutral Interpretation.

The Contract Documents shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

Revise and add the following definitions in 1-1.07B Glossary:

Addenda: Written or graphic instruments issued by the City before the bid deadline that modify or interpret the bidding documents by additions, deletions, clarifications, or corrections.

Affiliate: An affiliate of a bidder, Contractor, or Subcontractor is an entity that is subject to control by the same persons who control the bidder, Contractor, or Subcontractor, through joint ownership or otherwise.

Affidavit Of Final Completion and Release Upon Final Payment: The final written declaration by the Contractor to City that: the entire Work has been fully completed; Contractor has submitted all required closeout documents; Contractor has completed all closeout and commissioning procedures, all in accordance with the Contract Documents; that the Work is ready for final inspection and that upon receipt of final payment, Contractor releases claims against the City excepting only disputed claims in stated amounts identified in the release.

Agreement: The executed construction Contract between the City and the Contractor.

Alternate: An amount stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as Alternate Work, to be added or deducted from the Total Base Bid, which shall be the Contractor's responsibility if the City accepts the Alternate Bid Item.

Applicable law: All state, federal and local laws, statutes, ordinances, codes, rules and regulations governing the Work.

Application for final payment: The Contractor's written request for final payment including reconciliation of all partial payments, claims, changes or other proper adjustments to the Contract.

Bid Deadline: means the date and time designated in the notice inviting sealed bids as the last date and time for receipt of bids, as may be revised by addenda.

Bidder: A person or firm that submits a bid.

Bidding Documents: means the Notice Inviting Sealed Bids, Bidding Instructions, the City-prescribed bid forms, which each bidder must complete to submit a bid, the Contract Documents enumerated in the Agreement and all other construction documents prepared and issued for bidding purposes including all addenda.

Change Order: A Bilateral Change Order or a Unilateral Change Order as defined in Section 4-1.05C below:

Bilateral Change Order: A written document executed by the Contractor and the City using the City's standard form of Change Order form, reflecting mutual agreement between the City and Contractor for: (A) any alteration in, deviation from, addition to, or deletion from the general scope of Work of the Contract including any increase or decrease in the quantity of any bid item or portion of the Work or the deletion of any bid item or portion of the Work; (B) a change in the terms or conditions of the Contract; and (C) the amount of the adjustment, if any, in the Contract Price and Contract Time.

Unilateral Change Order: A written document issued by the City to adjust the Contract Price and/or Contract Time if the City and Contractor cannot agree on the adjustment only in the following instances: 1) withholds and deductions allowed under the Contract Documents; and 2) final quantity adjustments for unit price work that reconcile original estimated quantities on the Bid Item List with final actual quantities used; and 3) an increase or decrease in the Contract Time consistent with the Contract Documents.

Construction Change Directive: A unilateral written order prepared by the Engineer directing the Contractor to perform a change in the Work in accordance with Section 4-1.05.

Construction permits: Permits required for the proper execution and completion of the Work, which are customarily secured after execution of the Contract including, but not limited to, permits related to trenching, excavation, street work, mechanical, electrical, plumbing, and elevators.

Contract: See Agreement.

Contract Acceptance: The formal written action by the City accepting the Work as complete. (Also known as Final Acceptance.) For purposes of Final Acceptance the City Council must accept the Work.

Contract Documents: The Contract Documents are enumerated in the Agreement.

Contract Price: The Contract Price is the total aggregate amount of the Contractor's bid price based on the estimated quantities listed in the Biding Sheet as set forth in the award of the Contract approved by the City Council, subject to adjustment for variances in quantities and changes pursuant to Change Orders executed in accordance with the Contract Documents.

Contract Time: Number of working days specified in the Agreement within which the Contractor must fully perform all Work under the Contract.

Department: City of Goleta (City) acting by and through its Public Works Department; its authorized representatives.

Director: The Public Works Director of the City

Engineer: Any duly authorized representative either employed by or contracting with the City acting within the scope of the particular duties delegated to them.

Extra work: Any Work, desired or performed, but not included in the original Contract and not covered by a Bid Item Unit Price

Final Completion: Final Completion is the stage of performance of the Work when:

1. All Work required by the Contract Documents has been fully completed in compliance with the Contract Documents and all Applicable Laws including, but not limited to, correction or completion of all punch list items;
2. Contractor has delivered to the City all closeout documentation required by the Contract Documents including but not limited to the closeout documentation required by Section 9-1.17;
3. The Work passes the Engineer's final inspection;
4. Final inspection and approval by the City and all applicable governmental agencies has occurred;
5. The City Council accepts the Work as complete and Engineer, in his or her discretion, records a Notice of Completion.

Final pay item: Bid item whose quantity shown on the Bid Item List is the quantity to be paid, regardless of actual quantity used, except as provided in Section 9-1.02C.

Force Majeure: Any of the following events, which materially and adversely affect Contractor's obligations hereunder: earthquakes; acts of god, epidemic, blockade, embargoes, rebellion, war, terrorism, national emergency, riot, act of sabotage, or civil commotion; discovery of any archaeological, paleontological or cultural resources; spill of hazardous substances by a third party at or near the project site which is required to be reported to the California Environmental Protection Agency, Department of Toxic Substances Control; discovery at, near, or on the site of any species listed as "threatened" or "endangered" under the Federal or State Endangered Species Act; or unusually severe weather conditions.

Holiday: Holiday shown in the following table:

Holiday	Date observed
Every Sunday	Every Sunday
New Year's Day	January 1st
Birthday of Martin Luther King, Jr.	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving Day	Day after Thanksgiving Day
Christmas Eve	December 24th
Christmas Day	December 25th
New Year's Eve	December 31st

Inspector: The person designated by the engineer to ensure specification compliance.

Milestone: A deadline for completion of a portion of the Work established in the Contract Documents, and includes an event activity on a schedule that has zero duration and is used to represent the start or end of a certain phase of the Work.

Or equal substitution: The material product, equipment or process proposed by the Contractor for use in the Work as equivalent to that specified in the Contract Documents. See Section 4-1.07.

Product data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

Registered Bidder: A Bidder that registers with the City by providing its street address, e-mail, phone, and fax to the City at the time of pick-up of or request for Bidding Documents.

Samples: Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Schedule:

1. **Baseline Schedule:** Initial schedule accepted by City showing the original work plan starting on the date of commencement established by City's Notice to Proceed. This schedule shows no completed work to date and no negative float or negative lag to any activity.
2. **Revised Schedule:** Schedule that incorporates a proposed or past change to logic or activity durations.
3. **Updated Schedule:** Current schedule developed from the accepted baseline and any subsequent City-accepted updated or revised schedules through Engineer's regular monthly review to incorporate actual past progress.

Shop drawings: Drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, manufacturer, supplier or distributor showing details of manufactured or assembled products or systems proposed to be incorporated into the Work.

Special Notice: A notice in writing required to be provided under the Contract Documents within a specified interval of time (e.g., 48 hours) prior to commencement of the contemplated action. See section 12-2.

Subcontract: Contract between the Contractor and Subcontractor to perform a portion of the Work.

Subcontractor: A Subcontractor is a person or entity who has a direct contract with the Contractor or with another Subcontractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Bidding Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

Submittal: Shop drawings, product data, samples, test samples, quality control plans, work plans schedules and similar submittals:

1. **Action Submittal:** Written and graphic information and samples that require the City's response.
2. **Informational Submittal:** Written information that does not require the City's response.

Supplemental Project Information. Drawings and documents showing existing site conditions or as-built improvements and made available to Bidders for general background information about the Project. No guarantee is made that existing improvements or site conditions are accurately shown or described in Supplemental Project Information.

State: The State of California

Add the following definitions to 1-1.07B Glossary:

Total Base Bid: The sum stated in the bid for which bidder offers to perform the Work described in the bidding documents, but not including alternates.

Unauthorized work: Work performed that is not required or authorized by the Contract. Contractor shall undertake, at its risk, work included in any oral request, written order, Change Order, or Construction Change Directive issued by a person in excess of that person's authority as provided herein. Additionally, any work performed by the Contractor beyond the lines and grades shown on the Contract Documents or any extra work performed or provided by the Contractor without notice to the City shall be considered unauthorized and at the sole expense of the Contractor. Unauthorized work will not be measured or paid for and no extension of Contract Time will be granted on account thereof. Any unauthorized work may be ordered removed at the Contractor's sole cost and expense. The failure of the City to direct or order removal of unauthorized work shall not constitute acceptance or approval of such work nor relieve the Contractor from any liability on account thereof.

Unit Price: An amount entered in the bid by a bidder or a “Contract Item” price established by the City in the Bid as a price per unit of measurement for payment for materials, equipment

or services including taxes, supervision, overhead and profit for a portion of the Work described in the Bidding Documents.

Work: The resources, activities, construction and other services specified, indicated, shown, or reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations, including, but not limited to all alterations, amendments, extensions to it made by Change Order or Construction Change Directive required for Contract acceptance by the City.

Work Directive: A unilateral written order issued by the City directing the Contractor to continue performance of the Work or a disputed item of Work pending resolution of a claim or dispute concerning the scope of work or issued after a Contractor default. 4-1.05F.

Work Moratorium: Per City of Goleta Resolution 15-45, all work in the commercial zone on Hollister Avenue between Fairview Avenue and Patterson Avenue is prohibited between November 15 and January 2.

Replace section 1-1.12 with:

1-1.12 MISCELLANY

Checks and bonds are payable to the City of Goleta.

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

2 DELETED See Notice Inviting Sealed Bids and Bidding Instructions.

[illegible]

3 CONTRACT AWARD AND EXECUTION

DELETE 3-1.04.

Delete 3-1.05 and substitute the following:

3-1.05 CONTRACT BONDS (PUBLIC CONTRACT CODE § 7103 AND CIVIL CODE § 3247 ET SEQ.)

The successful bidder must furnish 2 bonds:

1. Payment bond meeting all the statutory requirements of the State of California on a form provided by the City in an amount that shall equal least one hundred percent (100%) of the Contract Price to secure payment of all claims, demands, stop payment notices, or charges of the State of California, of material suppliers, mechanics, or laborers employed by the Contractor or by any Subcontractor or any person, firm or entity eligible to file a stop payment notice with respect to the Work; and.
2. Performance bond meeting all statutory requirements of the State of California on the form provided by the City. The bond shall be furnished as a guarantee of the faithful performance of the requirements of the Contract Documents as may be amended from time to time including, but not limited to, liability for delays and damages (both direct and consequential) to the City and the City's separate contractors and consultants, warranties, guarantees and indemnity obligations, in an amount that shall equal at least one hundred percent (100%) of the Contract Price.

City- approved bond forms are included in the Agreement section of the Contract Documents.

All bonds shall be executed by a California admitted surety insurer. Bonds issued by a California admitted surety listed in the latest versions of the U.S. Department of Treasury Circular 570 shall be deemed to be accepted unless specifically rejected by the City. Bonds from a California admitted surety not listed in Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure Section 995.660(a). The attorney-in-fact who executes the required bonds on behalf of the surety shall affix thereto a certified and current copy of the power of attorney. The signatures shall be acknowledged by a Notary Public.

Every bond must display the surety's bond number and incorporate the Contract for construction of the Work by reference. The terms of the bonds shall provide that the surety agrees that no change, extension of time, alteration or modification of the Contract Documents or the Work to be performed thereunder shall in anyway affect its obligations and shall waive notice of any such change, extension of time, or alteration or modification of the Contract Documents.

Surety further must agree that it is obligated under the bonds to any successor, grantee, or assignee of the City.

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

Should any bond become insufficient, or should any of the sureties, in the opinion of the City, become non-responsible or unacceptable, the Contractor shall within ten (10) calendar days after receiving notice from City provide written documentation to the satisfaction of City that Contractor has secured new or additional sureties for the bonds, otherwise the Contractor shall be in default of the Contract. No further payments shall be deemed due or will be made under the Contract until a new surety(ies) qualifies and is accepted by City.

Delete 3-1.08 – 3-1.19:

^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^

4 SCOPE OF WORK

Add to the end paragraph of section 4-1.02:

4-1.02A FIELD MEASUREMENTS

Since the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various plans and other Contract Documents relative to that portion of the Work, as well as the Supplemental Project Information furnished by the City (surveys), if any, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a Request for Information ("RFI") submitted to the Engineer, in such form as the Engineer may require. The accuracy of grades, elevations, dimensions, or locations of existing conditions are not guaranteed by the City, and the Contractor is responsible for verifying same, except to the extent that the City performs the construction staking for the Project.

Delete 4-1.05 and substitute the following:

4-1.05 CHANGES AND EXTRA WORK

4-1.05A General

Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Section 4-1.05 and elsewhere in the Contract Documents. The City may, at any time, without notice to Contractor's surety(ies), order changes in the Work within the general scope of the Contract.

Changes in the Work shall be performed under applicable provisions of the Contract Documents. Until the City issues a signed Change Order, do not commence changes to the Work; unless the City issues a Construction Change Directive pursuant to Section 4-1.05E.

4-1.05B Work-Character Changes

The City adjusts the unit price for an item if:

1. An ordered plan or specification change materially changes the character of a work item from that on which the bid price was based
2. The unit cost of the changed item differs when compared to the unit cost of that item under the original plans and specifications
3. No approved *Change Order* addresses the payment

The City adjusts the payment under section 9-1.15, “Work-Character Changes.”

4-1.05C Change Orders

A Change Order is a Bilateral Change Order or a Unilateral Change Order, as defined below:

Bilateral Change Order: a written document executed by the Contractor and the City using the City’s standard Change Order form, reflecting mutual agreement between the City and Contractor for

1. Any alteration in, deviation from, addition to, or deletion from the general scope of Work of the Contract, including any increase or decrease in the quantity of any bid item or portion of the Work or the deletion of any bid item or portion of the Work;
2. A change in the terms or conditions of the Contract; and
3. The amount of the adjustment, if any, in the Contract Price and/or Contract Time.

All changes in Contract Price or Contract Time require a Bilateral Change Order unless the change falls within the definition of a Unilateral Change Order.

Unilateral Change Order: A written document issued by the City to adjust the Contract Price and/or Contract Time if the City and Contractor cannot agree on the adjustment only in the following instances:

1. Withholds and deductions allowed under the Contract Documents;
2. Final quantity adjustments for unit price work that reconcile original estimated quantities on the Bid Item List with final actual quantities used; and
3. An increase or decrease in the Contract Time consistent with the Contract Documents.

The issuance of a Unilateral Change Order is subject to the City’s sole discretion.

4-1.05D Accord and Satisfaction

Contractor’s agreement on any Bilateral Change Order shall be a full compromise and settlement of all adjustments to the Contract Time and Contract Price, and all compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called “Impacts”), including any ripple or cumulative effect of said Impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in the Change Order. By execution of any Bilateral Change Order, Contractor agrees that the Bilateral Change Order constitutes a complete accord and satisfaction with respect to all claims for schedule extension, Impacts, or any costs of whatsoever nature, character or kind arising out of or incidental to the Bilateral Change Order. No action, conduct, omission, product

failure or course of dealing by the City shall act to waive, modify, change, or alter the requirement that Bilateral Change Orders must be in writing, signed by the City and Contractor and that such written Bilateral Change Orders are the exclusive method for effectuating any change to the Contract Price and/or Contract Time, except when Unilateral Change Orders are authorized, as set forth above.

4-1.05E Construction Change Directives

A unilateral written order prepared and signed by the Engineer directing the Contractor to perform a change in the Work. The Engineer may by Construction Change Directive, without invalidating the Contract, order changes in the Work, including additions, deletions, revisions, extra work. A Construction Change Directive may or may not warrant a change in Contract Time or Contract Price. The Construction Change Directive may specify that the change in the Work shall not exceed specified estimates of cost and time prior to final agreement on the extent of adjustment in the Contract Price and adjustment of the Contract Time, if any. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time.

4-1.05F Adjustment of Contract Price

If the Construction Change Directive or Bilateral Change Order provides for an adjustment to the Contract Price, the adjustment shall be based on one or a combination of the following methods:

1. Bid item prices
2. Agreed price
3. Force account
4. Specialist billing (see Section 9-1.05)

If the Engineer chooses to pay for change order work based on an agreed price, but the Contractor and the Engineer cannot agree on the price, the City pays by force account.

If a portion of extra work is covered by bid items, the City pays for this work as changed quantities in those items. The City pays for the remaining portion of the extra work by force account or agreed price.

4-1.05G Authority to Approve Changes

The City Manager has authority to approve change orders up to the contingency amount (usually 10% of the Contract Price) as authorized by the City Council. Any change orders exceeding this amount must be approved by the City Council. The Engineer is authorized to approve changes in work in urgency situations. Except as specified in this Section, the Engineer shall have exclusive authority over the monetary and budgetary matters concerning the project.

4-1.05H No Verbal Changes

All changes to the Contract, whether resulting in an increase, decrease, or no change in the Contract Price or Contract Time, must be in a written document that is authorized by the Contract Documents and signed by an authorized representative of the City.

4-1.05I City-Initiated Change Proposal Request

The City may issue a change proposal request, in writing, to the Contractor, describing a proposed change to the Work and requesting the Contractor submit an itemized proposal in a format acceptable to the City within ten (10) calendar days after the City's issuance of the "Change Proposal Request." The Contractor's proposal shall include an analysis of impacts to cost and time, if any, to perform the extra work, or to delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs, and Contractor's proposed methods to minimize costs, delay and disruption to the performance of the Work. If Contractor fails to submit a written proposal within such period of time, the change described in the City's Change Proposal Request shall be deemed to not result in an increase to the Contract Price or Contract Time and the change shall be performed by Contractor without any such increases. A Change Proposal Request does not authorize the Contractor to commence performance of the changed work. Contractor shall not perform any change until receipt of the City's written approval through either a Change Order or Construction Change Directive.

4-1.05J Contractor-Initiated Change Order Request

If the Contractor alleges that instructions issued after the date of the Contract will result in increases to the Contract Price or Contract Time, if latent or unforeseen conditions require modification of the Contract Documents, or the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, an Initial Notice of Potential Claim may be submitted to the Engineer in writing pursuant to Section 5-1.43, in a format acceptable to the City, and must specify the reasons for such change, including relevant circumstances and impacts on the schedule. Contractor shall submit a written price proposal, as described in Section 4-1.05I above, concurrently with the Initial Notice of Potential Claim. Any Contractor-initiated change order request included in an Initial Notice of Potential Claim that is approved by the City will be incorporated in a Change Order or Construction Change Directive. If the Engineer determines that the Work in question is not a change, the City will issue a work directive, ordering the Contractor to proceed with the Work without delay and shall maintain the records required by Sections 4-1.05 and 5-1.43A(2) below.

4-1.05K Contractor's Good Faith Review of Subcontractor Requests for Changes and Claims

Contractor shall make a good faith determination of the validity of the nature and amount of changes and claims requested by Subcontractors before passing through such requests to the City. It is the Contractor's responsibility to check all Subcontractor and supplier questions for correctness, completeness, detail and fairness before submitting to the City.

4-1.05L Contractor Maintenance of Daily Records for Changes and Claims

In the event that Contractor is directed to perform any changes to the Work, or should Contractor encounter conditions which the Contractor believes would obligate the City to adjust the Contract Price and/or the Contract Time, Contractor shall maintain detailed records of the cost of such changes on a daily basis summarized in a daily report supplemented by back-up records. Such records shall include without limitation hourly records for labor and construction equipment, itemized records of materials, including delivery tickets, and equipment used each day in connection with the performance of any change to the Work. In the event that more than one change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, construction equipment, materials, and equipment for each such change. In the event that one or more changes to the Work is performed by the Contractor in a calendar day in addition to base Contract Work, Contractor shall maintain

separate records of labor, equipment, and materials for each change and the base Contract Work. In the event that any Subcontractor of any tier, shall provide or perform any portion of any change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this paragraph. Each daily record maintained hereunder shall be signed by Contractor; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete, and relates only to the change referenced therein. All records maintained by Subcontractors of any tier, relating to the costs of a change in the Work shall be signed by such Subcontractor's authorized project manager or superintendent. All such records shall be forwarded to the City on the day the Work is performed (same day) for independent verification. The City shall attempt to review and reconcile costs for changes on a daily basis. The City's signature on the report shall indicate agreement with the information reflected therein, not that the Contractor is entitled to payment of the costs in the report. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review, and/or reproduction such records, adjustments to the Contract Price or Contract Time, if any, on account of any change to the Work may be deemed waived for that day. Contractor's obligation to maintain back-up records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to changes to the Work, including but not limited to the Claims procedures.

Labor. The daily report shall show the names, trade, labor, classifications, and hours worked, for the workers.

Material. The daily report shall describe and list quantities of materials used, attaching delivery tickets.

Equipment. The daily report shall show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.

Other Services and Expenditures. Other services and expenditures shall be described in such detail in the daily report as the City may require.

Cost. The report shall provide dollar values for each category of cost.

4-1.05M Credit for Deleted Work

Contractor agrees that the City has the right, in its sole discretion, to determine whether any or all of the Work described in the Contract Documents shall be deleted or whether to terminate Contractor's performance, in whole or in part, under the Contract Documents and without any penalty being incurred by the City. See Section 9-1.06 regarding payment for changed quantities. See Section 8-1.13 regarding termination.

4-1.05N Final Determination of Adjustment of Contract Sum and Contract Time

After issuance of a Construction Change Directive, when the City and Contractor reach agreement on adjustment of the Contract Price and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

4-1.05O CONTRACT UNIT PRICES

If a change is ordered in an item of work covered by Contract Unit Price, and such change does not involve a substantial change in the character of work from that shown on the Plans or included in the Specifications, then payment will be based upon the increase or decrease in quantity and the Contract Unit Price.

In the case of such an increase or decrease in a Major Bid item (defined as a single Contract item constituting 10 percent or more of the original Contract Price), the use of this basis for adjustment of payment will be limited to that portion of the change, which together with all previous changes to that item, is not in excess of 25 percent of the total cost of such item based on the original quantity and unit price.

If a change is ordered in an item of work covered by a Contract Unit Price, and such change does involve a substantial change in the character of the work from that shown on the plans or included in the specifications, an adjustment in payment will be made.

Should any Contract item be deleted in its entirety, payment will be made only for actual costs incurred for that item prior to notification of such deletion.

4-1.05P Work by Contractor

The following percentage shall be the maximum allowed to be added to the Contractor's extra work costs and shall constitute the maximum markup for all overhead and profits. The markups established in Sections 9-1.04, 9-1.06 and 9-1.11 shall be replaced with:

- | | |
|---------------------------------|-----|
| 1. Labor | 15% |
| 2. Materials | 10% |
| 3. Equipment Rental | 10% |
| 4. Other items and Expenditures | 10% |

To the sum of the costs and markups provided for in this subsection, 1 percent shall be added as compensation for bonding.

4-1.05Q Work by Subcontractor

When all or any part of the extra work is performed by a Subcontractor, the markup established in 9-1.06B shall be applied to the Subcontractor's actual cost of such work. A markup of 10 percent on the first \$5,000 of the subcontracted portion of the extra work and a markup of 5 percent on work added in excess of \$5,000 of the subcontracted portion of the extra work may be added for the Contractor's costs and supervision.

4-1.05R Disputed Work

If the Contractor and the City are unable to reach agreement on disputed work, the City may direct the Contractor to proceed with the work. Payment shall be determined later by mediation, if the City and Contractor agree thereto, or as fixed in a court of law.

Although not to be construed as proceeding under extra work provisions, the Contractor shall keep and furnish records of disputed work.

4-1.06 DIFFERING SITE CONDITIONS

Add the following:

4-1.06D Existing Utilities; Location, Removal, Relocation and Protection.

Known utilities and their respective owners are shown on the Plans or specified in Supplemental Project Information. In accordance with California Government Code § 4215, City shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project Site, if such utilities are not indicated on the Bidding Documents and cannot be inferred from the presence of other visible facilities on or adjacent to the Project site. Contractor will not be compensated for the costs of locating, repairing damage due to the Contractor's failure to exercise reasonable care, in removing or

relocating utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Project Site necessarily idled during such work. The Contractor will not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of the City to provide for removal or relation of such utility facilities. Nothing in Government Code § 4215 shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Project Site can be inferred from the presence of other visible facilities, such as buildings, meters, curb markings, street markings, valves, hydrants, manhole covers, water valve covers, survey monuments, grates, vaults and junction boxes, on or adjacent to the Project Site, provided, however, nothing in Government Code § 4215 shall relieve City from identifying main or trunklines in the Contract Documents. If the Contractor encounters utility facilities not identified by the City in the Contract Documents, the Contractor shall immediately notify, in writing, the City and the utility owner. In the event that such utility facilities are owned by City, City shall have the sole discretion to perform repairs or relocation work at a price determined in accordance with the Contract Documents.

(a) The Contractor shall make a minimum of 2 exploratory excavations of all utilities lying wholly or in part within two feet of the Contractor's proposed excavation limits, whether approximately parallel to or crossing the proposed limits to determine the alignment of utilities. All such exploratory excavations shall be performed as soon as practicable after award of the Contract sufficiently in advance of construction to avoid possible delays to the Work. When such exploratory excavations show a utility location different than indicated on the Plans, the Contractor shall notify the Engineer. After determining the exact location of such utilities, the Contractor shall backfill the excavations and shall immediately construct either a temporary or permanent resurfacing over the backfill. Temporary resurfacing shall be constructed when the exploratory excavations are made in the area located within the proposed excavations. Permanent resurfacing shall be constructed when the exploratory excavations are made in an area outside the proposed excavations. The permanent resurfacing shall be of the type and thickness specified for resurfacing over the adjacent area or as field conditions may otherwise require, as determined by the Engineer. In either case, the excavations shall be backfilled in accordance with the Plans and Specifications.

(b) All costs for making exploratory excavations (including backfilling and resurfacing as specified herein) shall be absorbed or included in the prices bid for the various items of the Work. The Contractor shall notify the utility owners of the proposed schedule of the Work sufficiently in advance to allow for the overall coordination of any relocation work to be done, and shall cooperate with utility owners in the performance of their work.

(c) In accordance with California Government Code ("CGC") Section 4216 et seq., when Work is to be conducted in an area which is known, or can be inferred from the presence of other visible facilities on or adjacent to the Project site, to contain underground utilities or subsurface improvements, the Contractor shall contact Underground Service Alert of Southern California at least two (2) Working Days, but not more than 14 Calendar Days, in advance of any construction activity that will or could damage or affect any underground utility or subsurface improvement, and obtain an inquiry identification number (CGC 4216). Caltrans and certain other agencies are not required to become a member of Underground Service Alert. The Contractor shall contact non-member agencies directly and request they locate and mark their subsurface installations. Pursuant to CGC section 4216.2, when any proposed excavation is within 10 feet of a "high priority subsurface installation" the Contractor shall coordinate with the operator. The Contractor shall delineate with white paint or other suitable markings the area to be excavated. The Contractor shall notify Underground Service Alert in

the event of change in the Project limits or change in original Work previously shown on the Plans or indicated in the Specifications. When all Work is completed, the Contractor shall remove all markings for underground utilities.

(d) Subsurface installations are any underground pipeline, conduit, duct, wire, or other structure, except non-pressurized sewer lines, non-pressurized storm drains, or other non-pressurized drain lines. "Approximate location of subsurface installations" means a strip of land not more than 24 inches on either side of the exterior surface of the subsurface installation. "Approximate location" does not mean depth. (CGC 4216). When the subsurface installation markings are no longer reasonably visible, the Contractor shall notify Underground Service Alert to remark those subsurface installations that may be affected by excavation to the extent necessary (CGC 4216.3(c)).

4-1.06E Payment for Location, Removal, Relocation and Protection of Existing Utilities

Payment for location, protection, removal and relocation of existing utilities shall be included in the prices bid for the various items of Work involved and no additional payment will be made thereof (except to the extent such utilities are not indicated on the Bidding Documents and cannot be inferred from the presence of other visible facilities on or adjacent to the Project site).

In accordance with California Government Code Section 4215, if such utilities have not been identified with reasonable accuracy in the Contract Documents, the Contractor shall be compensated for the cost of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such Work. The Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of the City or the owner of the utility to provide for removal or relocation of such utility facilities.

4-1.06F Protection of Existing Utilities

The Contractor shall protect manhole covers, water valve covers, survey monuments, and grates of existing facilities. If necessary, they will be adjusted to grade by respective utility companies, unless noted on Plans as part of the Work of the Contract. The Contractor shall cover grates with material suitable for preventing any paving material from passing through the grate. On covers needing grade adjustment, the Contractor shall mark the location of all existing covers by scribing a cross in the new surface course. The cross mark shall be clear and legible after final rolling.

Curb markings for referencing the location of existing water valves, manholes and survey monuments shall be limited to 100 square inches at each location. Such markings shall be made with white paint backgrounds with black lettering. Any paint markings not in conformance with the above requirement shall be completely removed by the Contractor prior to completion of the project.

The Contractor shall maintain existing survey monuments identified on the plans as well as those discovered during construction (not shown on the plans).

Although overhead utilities have not been shown on all of the project plans, the Contractor is responsible to protect and maintain poles and overhead utility facilities.

Existing surface utilities to remain are known to encroach into the construction area. The Contractor is advised to carefully evaluate the location of existing poles and water meters

during bidding. These existing utility features may reduce productivity or limit the use of some construction equipment.

See also section 5-1.36D.

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

5 CONTROL OF WORK

Add to the end of section 5-1.03:

At Contractor's own risk, Contractor may implement any work suggested by the Engineer, in writing, but not specified or required.

5-1.04 CITY'S RIGHT TO STOP THE WORK AND CARRY OUT THE WORK

5-1.04A City's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 6-3.07 or repeatedly fails to carry out Work in accordance with the Contract Documents, the City may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity. The City's right to stop the Work is in addition to and without prejudice to any other rights or remedies of the City.

5-1.04B City's Right to Carry Out the Work

Notwithstanding other remedies available to the City, if the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a **forty-eight (48) hour** period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City, at its sole option and without obligation, may, with its own or outside forces, correct such deficiencies. In such case, an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including compensation for the City and its consultants' additional services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City, immediately. This remedy is cumulative. The City may terminate the Contractor's performance pursuant to the terms of the Contract. The City also has the right, but not the obligation, to self-perform or have other companies perform portions of the Work previously assigned to Contractor. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the cost of performing such work efforts.

5-1.05 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Sections 5-1.43.

Replace “Subcontractor List form and Caltrans Bidder – DBE Information form” in the 2nd paragraph of section 5-1.13B(1) with:

List of Subcontractors form and the Local Agency Bidder DBE Commitment (Construction Contracts), Exhibit 15-G form.

Replace “Caltrans Bidder – DBE – Commitment form” in the 1st paragraph of section 5-1.13B(2) with:

Local Agency Bidder DBE Commitment (Construction Contracts), Exhibit 15-G form.

5-1.13E Contingent Assignment of Subcontracts

Each subcontract or supply agreement is assigned by the Contractor to the City, provided that

1. assignment is effective only after termination of the Contractor's performance by the City, for cause or convenience, and only for those Subcontracts and supply agreements that the City accepts by notifying the Subcontractor, supplier, and Contractor in writing; and
2. assignment is subject to any prior rights of the surety obligated under bond relating to the Contract.

When the City accepts the assignment of a subcontract, the City assumes the Contractor's rights and obligations under the subcontract.

5-1.13F Arm's Length Transactions and Commercially Useful Function of Subcontractors and Suppliers

To assure competitive bids and to assure that no bid rigging, unfair practices, collusion or conflicts of interest occur in connection with the Work, Contractor agrees that all agreements between Contractor and Subcontractors and suppliers for performance of the Work shall be pursuant to arm's length transactions, with unrelated and unaffiliated firms (a “related” or “affiliated” firm is one which is subject to the control of the same persons through joint ownership or otherwise). In all such agreements, each firm shall act in its own best interest, for compensation that reflects the fair market values of the materials or services that are the subject of the transaction.

Contractor further agrees that each Subcontractor and supplier for the Work will perform a commercially useful function (*i.e.* is responsible for the performance, management and supervision of a distinct element of the Work). A Subcontractor or supplier does not perform a commercially useful function when, for example: the Work is outside the firm's experience or qualifications; the firm provides little or no supervision of the Work; more than fifty percent (50%) of the Work designated to be performed by a Subcontractor is performed by a lower tier Subcontractor or supplier; the Subcontractor only purchases materials while performing little or no Work; the firm works for only one prime contractor; or the same employees work for the firm and the Contractor.

If, upon the City's request, Contractor fails to provide adequate assurances of arm's length transactions or that all Subcontractors and suppliers will perform a commercially useful function, Contractor shall remove such Subcontractor or supplier from the project, exclude the cost associated with such firm from all Applications for Payment and change order requests and, if necessary, propose another Subcontractor or supplier to whom the City has no objection, without increase to the Contract Price or Contract Time.

Add to the end of section 5-1.16:

The representative must be able to competently speak, read, and write the English language and be able to clearly converse with all workers under his or her control. At no time shall the project be left with no person on site who is competent in the English language.

If the contract involves asphalt concrete repair or asphalt concrete resurfacing, asphalt concrete repair or asphalt concrete resurfacing work must be supervised by personnel with no less than 5 years of experience in asphalt concrete repair and asphalt concrete resurfacing. If asphalt concrete resurfacing or asphalt concrete repair work is consistently out of specified tolerance, discharge the worker immediately and provide replacement within one day of request, either verbal or written.

Add to the 1st paragraph of section 5-1.20A:

Attend weekly coordination meeting with Engineer and other entity at a time and location determined by the Engineer.

Add to the beginning of 5-1.23 SUBMITTALS:

5-1.23 GENERAL

The Contractor shall submit the following items to the Engineer for review at least five (5) working days prior to the preconstruction meeting. The schedule is subject to revisions by the Engineer in order to coordinate with other City projects.

Issuance of a Notice to Proceed is dependent on the timelines and the proper level of detail of these submittals. Submittals shall include, but are not limited to:

1. Key Personnel, Telephone Numbers and Emergency Telephone Numbers;
2. Project Construction Schedule per specifications;
3. Public Notices (i.e. Notifications and Door Hangers);
4. Storage Site Locations;
5. Traffic Control Plan / Detour Plans;
6. Parking Restriction Signs/Sample "No Parking" sign;
7. Noise mitigation measures;
8. Dust Control measures;
9. Waste Disposal Plan;
10. Copies of pertinent permits, licenses, certifications or required approvals per specifications;
11. List of Required Inspections;
12. Storm Water Pollution Prevention Plan (SWPPP);
13. Water Pollution Control Program (WPCP);
14. Electrical, Signal Poles, and Equipment proof of order receipt;
15. Specific date, hours and location of work;
16. Complete description of work to be done;
17. Number and type of equipment to be used;
18. Noise mitigation measures to be employed; and
19. Distance of the nearest resident to the work.

The Contractor shall deliver a minimum of two (2) sets with an electronic copy in PDF format. Each submittal item shall be individually dated and numbered for tracking purposes, with an accompanying transmittal.

Review, acceptance or approval of substitutions, schedules, shop drawings, list of materials and procedures submitted or required by Contractor shall not add to the Contract amount, and additional costs which may result therefrom shall be solely the obligation of the Contractor.

Add to section 5-1.26:

Construction Surveys: Contractor shall be responsible for all project control and construction surveying and for referencing, replacement and recording of survey monuments, and shall include this in the bid. No grade setting, staking or survey services will be performed by the Engineer. Surveying shall be performed by a Land Surveyor registered in the State of California to perform these services. The Engineer reserves the right to check the Contractor's work at any time during the project. Checks performed by the Engineer will not relieve the Contractor from responsibility to properly locate and construct the Work in accordance with these Contract Documents.

Construction surveys and staking will be included in payment for other bid items of work and no additional compensation will be provided.

Delete 5-1.27E and substitute the following:

5-1.27E Change Order Records

Maintain separate records for change order work costs.

Add section 5.127F and G:

5-1.27F As-Builts

Contractor shall maintain at the project site, and shall make available to the Engineer a set of as-built plans, which shall be continuously updated during the prosecution of the Work, and shall show all deviations and changes to the Work, existing conditions, and any other information the Engineer may request in a legible manner.

Contractor's obligation to keep as-built plans current, and to make them available to the Engineer, is a condition precedent to the City's duty to process Applications for Payment. Contractor's obligations under this section shall survive completion of the Work or termination.

5-1.27G Daily Reports

The Contractor shall complete a daily report in accordance with 8-1.01.

Add to section 5-1.31 JOB SITE APPEARANCE:

Contractor shall maintain job site in a clean and orderly fashion and in accordance with Dust Control specifications. Public Access shall remain clear of debris and hazards at all times. The Contractor shall prevent dust, grit, mud, excessive noise and other nuisances in and around the work areas during the entire contract period, including weekends and holidays.

Add to the end of section 5-1.32:

If you are authorized to use any portion of a street or parking lot, repair, slurry seal and restripe to the limits designated by the Engineer.

Add to the end of section 5-1.36D:

Assist the City with compliance required of the City as an operator under the provisions of Government Code §4216-4216.5.

Notify the Engineer if the infrastructure described in the Contract cannot be found. Unless otherwise specified in the Contract Documents, payment for locating underground utilities and

infrastructure shall be considered as included in the Bid prices for other items of works and no additional compensation will be allowed.

See also section 4-1.06 DIFFERING SITE CONDITIONS.

Replace entire section 5-1.43 with:

5-1.43 POTENTIAL CLAIMS AND DISPUTE RESOLUTION

5-1.43A Potential Claim

Any demand or assertion by the Contractor seeking an adjustment of Contract Price and/or Contract Time, or other relief, for any reason whatsoever, must be in strict compliance with the requirements of this Section 5-1.43. For purposes of this Section 5-1.43, any and all work relating to any such demand or assertion shall be referred to as “Disputed Work”, regardless of whether the basis of the demand or assertion arises from an interpretation of the Contract Documents, an action or inaction of the Contractor, the Engineer, or the City, or any other event, issue, or circumstance. The Contractor shall bear all costs incurred in complying with the provisions of this Section 5-1.43.

Promptly upon becoming aware of any event, issue, or circumstance including, but not limited to, disputes arising under the Contract, the acts or omissions of the Engineer or City or by operation of law, which the Contractor believes, in whole or in part, provides a basis for an adjustment of Contract Price and/or Contract Time. Or that Contractor’s performance is excused, or other relief, Contractor shall provide a signed written Initial Notice of Potential Claim to the Engineer in a format acceptable to the City. Contractor shall provide a signed written initial notice of potential claim to the Engineer within 5 days from the date the dispute first arose and before commencing any disputed work. The initial notice of potential claim shall provide the nature and circumstances involved in the dispute which shall remain consistent through the dispute. The initial notice of potential claim shall be submitted on Form CEM-6201A available on Caltrans’ website and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655. Assign an exclusive identification number for each dispute, determined by chronological sequencing, based on the date of the dispute.

The exclusive identification number for each dispute shall be used on the following corresponding documents:

1. Initial notice of potential claim.
2. Supplemental notice of potential claim.
3. Full and final documentation of potential claim.
4. Corresponding claim included in the Contractor's written statement of claims.

Provide the Engineer the opportunity to examine the site of work within 5 days from the date of the initial notice of potential claim. Proceed with the performance of contract work unless otherwise specified or directed by the Engineer.

Throughout the disputed work, maintain records that provide a clear distinction between the incurred direct costs of disputed work and that of undisputed work. Allow the Engineer access to your project records deemed necessary by the Engineer to evaluate the potential claim within 20 days of the date of the Engineer's written request.

Within 15 days of submitting the initial notice of potential claim, submit a signed supplemental notice of potential claim to the Engineer that provides the following information:

1. The complete nature and circumstances of the dispute which caused the potential claim.
2. The contract provisions that provide the basis of claim.
3. The estimated cost of the potential claim, including an itemized breakdown of individual costs and how the estimate was determined.
4. A time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of contract time is made.

Include your complete reasoning for additional compensation or adjustments.

Submit the supplemental notice of potential claim on Form CEM-6201B furnished by the Department and certify with reference to the California False Claims Act, Government Code Sections 12650-12655. The Engineer will evaluate the information presented in the supplemental notice of potential claim and provide a written response within 20 days of receipt. If the estimated cost or effect on the scheduled completion date changes, update information in items 3 and 4 above as soon as the change is recognized and submit this information to the Engineer.

Within 30 days of the completion of work related to the potential claim, submit the full and final documentation of potential claim to the Engineer that provides the following information:

- (1.) A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of work affected by the dispute.
- (2.) The specific provisions of the contract that support the potential claim and a statement of the reasons these provisions support and provide a basis for entitlement of the potential claim.
- (3.) When additional monetary compensation is requested, the exact amount requested calculated in conformance with section 4-1.05 or section 8-1.07C, including an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:
 - 3.1. Labor – A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested reimbursement of labor costs.
 - 3.2. Materials – Invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information related to the requested reimbursement of material costs.
 - 3.3. Equipment – Listing of detailed description (make, model, and serial number), hours of use, dates of use and equipment rates. Equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the affected work related to the dispute was performed.
 - 3.4. Other categories as specified by the Contractor or the Engineer.
- (4.) When an adjustment of contract time is requested, include the following:
 - 4.1. The specific dates for which contract time is being requested.
 - 4.2. The specific reasons for entitlement to a contract time adjustment.
 - 4.3. The specific provisions of the contract that provide the basis for the requested contract time adjustment.

- 4.4. A detailed time impact analysis of the project schedule. The time impact analysis shall show the effect of changes or disruptions on the scheduled completion date to demonstrate entitlement to a contract time adjustment.

- (5.) The identification and copies of documents and the substance of oral communications that support the potential claim.

The full and final documentation of the potential claim shall be submitted on Form CEM-6201C furnished by the Department and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655.

Pertinent information, references, arguments, and data to support the potential claim shall be included in the full and final documentation of potential claim. Information submitted subsequent to the full and final documentation submittal will not be considered. Information required in the full and final documentation of potential claim, as listed in items 1 to 5 above, that is not applicable to the dispute may be exempted as determined by the Engineer. No full and final documentation of potential claim will be considered that does not have the same nature and circumstances, and basis of claim as those specified on the initial and supplemental notices of potential claim.

If you, in conjunction with or subsequent to the assertion of a potential claim, request inspection and copying of documents or records in the possession of the City that pertain to the potential claim, you must make your records of the project, as deemed by the City to be pertinent to the potential claim, available to the City for inspection and copying."

Unless otherwise specified, the Engineer will evaluate the information presented in the full and final documentation of potential claim and provide a written response within 30 days of receipt. The Engineer's receipt of the full and final documentation of potential claim shall be evidenced by postal receipt or the Engineer's written receipt if delivered by hand. If you submit full and final documentation of potential claim after acceptance of the work by the City, the Engineer need not provide a written response.

5-1.43B Dispute Resolution

All disputes and claims arising under or by virtue of this contract shall be directed to and be determined by the Public Works Director. The Director's determination can be appealed to City Manager or their designee. The determination by the City Manager or their designee of disputes and claims shall constitute the decision of the City of Goleta; provided, however, that Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code shall apply to the public works claim of \$375,000 or less.

5-1.43C Dispute Resolution - Claims exceeding \$375,000

Any claim, dispute, or other matter in question arising out of or related to the Contract or Project exceeding three-hundred seventy-five thousand dollars (\$375,000.00) that cannot be resolved between the City and the Contractor shall be resolved by the Santa Barbara County Superior Court. Section 9-1.22, "Arbitration" of the Caltrans Standard Specifications, is deleted

5-1.43D Claims Procedures as a Prerequisite to Filing Suit

Contractor acknowledges and agrees that its failure to submit any notice of potential claim or claim arising under this Contract in accordance with Section 5-1.43, shall constitute a waiver of Contractor's right to additional compensation and/or extension of time. Failure to follow the provisions set forth in this Contract shall constitute a waiver of Contractor's right to receive any additional time or money as a result of any event giving rise to a claim or request for change

order. Notwithstanding any other provisions in the Contract relating to any additional time or money which Contractor may be entitled to upon the occurrence of any directive or other event, or any other circumstance, Contractor must comply with the provisions of Section 5-1.43 to avoid a waiver of any such entitlement to any additional time or money. Contractor's failure, neglect, or refusal to comply with the requirements of Section 5-1.43, or any portion thereof, shall bar Contractor's request for additional compensation or adjustments to contract time. Such failure, neglect, or refusal prejudices the City's and the Engineer's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for adjustment of contract time, and whether such adjustments may be warranted. Contractor hereby waives all rights to additional compensation or adjustments of contract time due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of Section 5-1.43.

5-1.43E Government Code Claims.

Notwithstanding Contractor's participation in dispute resolution proceedings or other claims procedures under the Contract, such proceedings are in addition to Contractor's obligation to present a written Government Code claim in accordance with Section 900 et al of the California Government Code, which is a prerequisite to filing a lawsuit for money or damages against the City. Contractor further acknowledges that notwithstanding Contractor's compliance with the claims procedures set forth in Section 5-1.43 or in the City Special Provisions, such procedures are in addition to Contractor's obligation to comply with the claims procedures set forth in Government Code sections 900 et al prior to filing a lawsuit against the City for any such claim. Failure to submit a Government Code claim, or comply with the claims provision contained in Section 5-1.43 or in the City Special Provisions, shall bar Contractor from bringing and maintaining a valid lawsuit against the City.

5-1.43F Participation in Dispute Resolution Proceedings

Contractor and the City agree that all parties necessary to resolve a claim or dispute should be parties to the same dispute resolution proceeding. Contractor agrees upon request of the City to be joined in any mediation or arbitration when Contractor's presence is required if complete relief is to be accorded and to prevent the possibility of conflicting rulings on a common issue of law or fact and otherwise to prevent the risk of the parties being subjected to inconsistent obligations or decisions.

5-1.43G Contractor's Continuing Obligations.

At all times during the processing of the Contractor's potential Claim, including, but not limited to, in response to a work directive issued by the Engineer, the Contractor shall diligently proceed with the performance of the Disputed Work and other Work, unless otherwise specified or directed by the Engineer.

The Contractor shall provide the Engineer the opportunity to examine the site of the Disputed Work as soon as reasonably possible, and in no event later than five (5) days from the date of the Initial Notice of Potential Claim. Throughout the processing of the Contractor's potential Claim, the Contractor shall provide the Engineer a reasonable opportunity to examine the site of the Disputed Work within five (5) days of the date of Engineer's written request therefor.

The Contractor shall promptly respond to any requests for further information or documentation regarding the Contractor's potential Claim.

Although not to be construed as proceeding with force account work, throughout the performance of the Disputed Work, the Contractor shall maintain daily records in accordance

with Section 4-1.05, that provide a clear distinction between the incurred direct costs of Disputed Work and other Work. The Contractor shall allow the Engineer access to its project records deemed necessary by the Engineer to evaluate the potential Claim within fifteen (15) days of the date of the Engineer's written request.

All Subcontractor's and material supplier's claims of any type shall be brought only through Contractor pursuant to the provisions of this Section 5-1.43 and Contractor's prior good faith review pursuant to Section 4-1.05. Under no circumstances shall any Subcontractor or material supplier make any direct claim against City.

Except where provided by law, or elsewhere in these Contract Documents, THE CITY SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES AND THE CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS. Contractor shall be limited in its recovery on any Claim(s) to the adjustments allowed in the Contract Documents.

During each step in the processing of the Contractor's Claim, each notice shall be accompanied by the Contractor's written statement that the adjustment or relief claimed is the entire adjustment or relief to which the claimant believes it is entitled as a result of the event, issue, or circumstance giving rise to the Claim.

Under no circumstances may the Contractor submit an Initial Notice of Potential Claim, Supplemental Notice of Potential Claim, or Notice of Final Claim after the date of final payment.

5-1.43H Notice of Third Party Claims

The City shall provide Contractor with prompt written notice of the receipt of any third-party claim relating to the Contract in accordance with Public Contract Code section 9201 by sending a copy of the third-party claim to Contractor at the address indicated in the Agreement via first class mail.

Replace the 2nd paragraph of section 5-1.46 with:

Immediately following the date the Engineer reports to the City Council as work completed, you are relieved from:

Add to the end of section 5-1.46:

A list of the remaining items (a punch list) will be prepared by the Engineer and given to the Contractor.

All punch list items shall be completed during the contract period. Failure to do so will not be considered an occasion of unavoidable delay. When all items have been completed to the satisfaction of the City Engineer, the project will be submitted to the City Council, which may accept the completed work.

Add to the end of section 6-3.01:

If the data provided to the City in support of a substitution request is incomplete or otherwise insufficient to prove the two points above, the Engineer may either deny the request outright or provide the Contractor the opportunity to provide additional information in support of its request. If the Contractor is provided an opportunity to resubmit additional information, the City has thirty (30) days to review such additional information. The Contractor shall not be entitled to any extension of the Contract Time for the time involved in the substitution request process.

By making a substitution request, Contractor shall be deemed to certify that: (i) the proposed substitution is equal to or exceeds all requirements of the pertinent Contract Documents as reasonably determined by Contractor; (ii) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified; (iii) the cost data presented is complete and includes all related costs under Contract, including an estimate of the redesign costs; (iv) Contractor will coordinate the installation of any accepted substitution, making such changes as may be required for the Work to be complete in all respects; (v) Contractor waives all Claims and will indemnify the City for additional costs related to the substitution which subsequently become apparent; and (vi) Contractor accepts all responsibility and will indemnify the City for direct or indirect costs and/or time impacts as result of the substitution including impacts to Work not identified in the proposal.

Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements in accordance with any substitution request unless the City accepts such request in a written Change Order.

Additional testing may be required, and all costs for testing shall be borne by the Contractor.

Add to section 6-3.05(D):

During the course of work, call for testing and inspection seventy-two (72) hours in advance of work associated with said testing and inspection.

Work not properly tested and inspected will be subject to rejection.

Delete 6-3.06 and substitute the following:

6-3.06 WARRANTIES

6-3.06A Warranty

The Contractor warrants to the City that materials and equipment furnished under the Contract will be of good quality and new. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements, including substitution requests not properly approved and authorized pursuant to 6-3.02, shall be considered defective. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Section 6-3.07 herein. Contractor's performance bond surety shall be liable for breaches of all warranties and correction guarantees referenced in this Section or Section 6-3.07.

Where any warranties provided under the Contract Documents overlap, conflict, or are duplicative, Contractor shall be bound by the more stringent requirements.

6-3.06 Procurement and Assignment of Warranties

Any and all warranties or guarantees which the Contractor is required to obtain pursuant to the Contract Documents which are obtained from any person or entity other than the Contractor including, but not limited to, Subcontractors and manufacturers, shall either be obtained by Contractor in the name of the City (or such other name as the City may designate in writing to Contractor) or be legally transferred or assigned to the City (or the City's designee) at the time of Final Completion of the Work. The Contractor shall perform the Work in such a manner so as to preserve any and all such guarantees and warranties. The Contractor shall secure written warranties from Subcontractors, material suppliers, and manufacturers' warranties for labor and materials which extend beyond the one-year correction period in writing. Any

warranty upgrades or extensions that are offered by suppliers or manufacturers of any equipment or system in the project shall be provided to the City as part of Contractor's and Subcontractors' standard warranties. Provided, however, if any such upgrade/extension offers would expire in less than 90 days after final completion of the Work, the Contractor shall provide the City with such offers at 90 days before the expiration date.

6-3.06C Survival of Warranties

The provisions of this Section 6-3.06 shall survive Contractor's completion of the Work or termination of the Contractor's performance of the Work.

Add section 6-3.07:

6-3.07 CORRECTION GUARANTEE

6-3.07A Before or After Final Completion

The Contractor shall promptly correct Work rejected by the City or failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and regardless of whether or not the Work was fabricated, installed, or performed by the Contractor or any Subcontractor. All costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the City's services and expenses made necessary thereby, shall be at the Contractor's expense.

6-3.07B After Final Completion

In addition to the Contractor's obligations under Section 6-3.06, if, within one (1) year after the date of Final Completion of the Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City, the City may correct it in accordance with Section 5-1.04.

The one (1) year correction period shall be extended with respect to portions of Work first performed after Final Completion by the period of time between Final Completion and the actual completion of that portion of the Work.

During the one (1) year correction guarantee period, the Contractor shall act on all notices received from the City within forty-eight (48) hours, unless the notice states that an emergency response is required (in which event, the Contractor shall act immediately). The City will not be required to call Subcontractors, suppliers or manufacturers directly.

The Contractor's performance bond surety shall be liable for any breaches of all guarantees, including the correction guarantee established by this Section.

In the event of failure of the Contractor to comply with above mentioned conditions within two (2) calendar days (48 hours) or immediately for emergencies after being notified in writing, the City is hereby authorized to proceed to have defects repaired and made good at the expense of the Contractor who hereby agrees to pay all costs and charges, direct and indirect, therefore immediately on demand.

If, in the opinion of the City, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the City or to prevent interruption of operations of the City, the City will attempt to give the notice required by this Section 6-3.07. If the Contractor cannot be contacted or does not comply with the City's request for correction within a reasonable time as determined by the City, the City may, notwithstanding the provisions of this Section 6-3.07, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the Contractor. Such action by the City will not relieve the Contractor of the guarantees provided in this Section 6-3.07 or elsewhere in this Contract.

This Section 6-3.07 does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. The Contractor shall furnish the City all appropriate guarantee or warranty certificates, as required, upon completion of this project.

6-3.07C Removal of Non-Conforming Work

The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the City.

6-3.07D Cost of Correction Due to Non-Conforming Work

If the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents damages or removes any other property, including but not limited to completed or partially completed construction of the City or any contractor, the Contractor shall bear the cost of correcting any and all such damaged or removed property.

6-3.07E No Impact on Statutes of Limitation

Nothing contained in this Section 6-3.07 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in this Section 6-3.07 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations. Nothing contained in this Section 6-3.07 shall be construed as establishing any limitation period with respect to the City's enforcement of any Contractor obligations under the Contract Documents that is shorter than the longest limitation period allowed under applicable law.

6-3.07F Acceptance of Non-Conforming Work

If the City prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced by an amount equal to the entire cost of replacing the Work to make it as originally specified and intended. Such adjustment shall be effected whether or not final payment has been made.

^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^

7 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

Add to section 7-1.02K(5):

Unless authorized by the Engineer, regular working hours shall be within the hours of 7:30 a.m. and 4:30 p.m. Where night work is required, working hours shall be within the hours of 7:00 pm to 5:30 a.m., unless otherwise authorized by the Engineer. When school is in session, regular working hours may be altered by the Engineer to coincide with the school hours of operations.

If overtime work is approved by the Engineer, the City shall have the right and authority to make deductions in payments due or to become due to the Contractor as the City may deem just and reasonable for engineering, inspection, general supervision and overhead expenses.

Add new sections 7-1.03A and 7-1.03B:

7-1.03A Public Notification

The Contractor shall be responsible for Public Notification for each phase of the Work. Upon notification, Contractor shall prepare and submit a map of locations where the notifications will be delivered, including date and time of the planned notification to the Engineer for approval.

Contractor shall deliver public notices to:

1. Schools within three (3) blocks of the work if work will occur during school sessions;
2. Businesses and residences along the street included in the work; and
3. Businesses and residences along streets with access exclusively through streets included in the work.

Where apartment and office complexes are affected by the work, door hangers shall be delivered to each tenant. Posting notices on a common mailbox is not considered acceptable.

7-1.03A(1) Material

Public notices must include:

1. Start date of work;
2. Daily schedule of proposed work;
3. Typical parking restrictions;
4. Times of any restricted driveway access;
5. Your company name and phone number; and
6. Other information deemed necessary by the Engineer

Door hangers must be 14 inches by 4 inches Springhill index or equivalent, printed in English on one side and Spanish on reverse side.

Sample public notices are provided in the appendices.

7-1.03A(2) Submittal

Submit public notices for approval.

7-1.03A(3) Construction

Deliver "Here We Come" public notice two (2) weeks before starting work.

Deliver "Door Hanger" public notice no less than 72 hours before work on specific street.

7-1.03B Parking Control

Use if required by special provisions.

7-1.03B(1) Material

Parking Signs must meet the following requirements:

1. Be of moisture resistant heavy cardstock
2. No less than 1.75 square feet in surface area
3. On a pre-printed template with red water resistant lettering on white background
4. Include the words "Tow Away" and "No Parking" with a character height of no less than 2.75 inches and a stroke width of not less than 0.5 inches
4. Include specific day, date and time of restriction in lettering height of no less than 2.00 inches and stroke with of no less than 0.35 inches
5. Include your name and local telephone number in lettering no less than 0.75 inch in height
6. Be mounted such that the words "No Parking" are at an elevation between 3 feet and 7 feet above grade
7. Tied with string to trees and power poles, taped to existing sign poles or mounted on stakes or barricades you provide
8. Be place no more than 75 linear feet apart

At the telephone number provided on signs, provide staff for telephone inquiries between the hours of 7:00 a.m. and 6:00 p.m. on working days.

7-1.03B(2) Construction

7-1.03B(2)(a) Signs

Post and maintain signs as follows:

1. Comply with approved Traffic Control Plan;
2. On time restricted streets, 24 hours prior to temporary restrictions; and
3. On unrestricted streets, 72 hours prior to restrictions.

Notify the Engineer when the signs are placed.

Promptly reset or replace missing, damaged or defective signs. Replace signs if work is delayed.

When no longer required, promptly remove signs, string, tape, lath, barricade and any other material used. Removed material becomes your property.

7-1.03B(2)(b) Remove vehicles

Notify Sheriff Communications Center at (805) 681-4100 and City of Goleta Code Enforcement Officer at (805) 961-7556 no less than two hours prior to needed removal. Provide the address nearest the parked vehicle, make, model, color and license number.

7-1.03B(3) Payment

Payment for parking control is included in Traffic Control System.

If a vehicle owner successfully contests a towing citation in court, and his or her citation is dismissed for cause related to your failure to perform under section 7-1.03A, the City will make deductions in payments due or to become due. If a claim is filed after acceptance of the work by the City, you must reimburse the City.

Replace the 1st paragraphs of section 7-1.05A with:

7-1.05A General

To the maximum extent permitted by law, Contractor agrees to defend, indemnify and hold harmless City and all of its officers, employees and agents from any liability, financial loss, claims, demands, or causes of action, including but not limited to related expenses, attorney's fees and costs, based on, arising out of, or in any way related to the work undertaken by Contractor or any person or entity employed by Contractor or its agents. Nothing in this section shall narrow the indemnification provisions contained in the Caltrans Standard Specifications. The defense of the City and its officers, employees and agents must be provided by qualified and experienced counsel acceptable to the City Attorney. Any counsel proposed to defend the City must have professional liability insurance from an admitted insurer with available limits of at least \$5,000,000 per claim.

Add the following:

7-1.05C Survival of Indemnity Obligations

Contractor's obligations under this Section 7-1.05A are binding on Contractor's and its Subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of the Contractor's performance of the Work.

Replace the first paragraph of section 7-1.06D(1) with:

7-1.06D(1) General

Contractor, at its sole cost and expense, agrees to purchase and maintain in full force and effect throughout the term of this Agreement insurance coverage acceptable to the City against any claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by Contractor, its agents, representatives or employees. Insurance shall be provided by insurers with a current A.M. Best rating of no less than A- and financial strength VII or better. Contractor shall provide the following insurance:

Replace section 7-1.06D(2) with:

7-1.06D(2) Liability Limits/Additional Insureds

The limits of liability must be at least combined single limits of no less than \$2,000,000 per occurrence for all covered losses and no less than \$4,000,000 general aggregate, and must contain:

- 1 Extension of coverage to the City, its officials, officers, agents and employees, as additional insureds, with respect to Contractor's liabilities hereunder in insurance coverages identified above;
- 2 A provision that coverage will not be canceled or subject to reduction until at least thirty (30) days' prior written notice has been given to the City Clerk, addressed to 130 Cremona Drive, Suite B, Goleta, CA 93117;
- 3 A provision that Contractor's insurance shall apply as primary, and not excess of, or contributing with, the City;
- 4 Contractual liability coverage sufficiently broad so as to include the liability assumed by the Contractor in the indemnity and hold harmless provisions of the Standard Conditions;

- 5 A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each;
- 6 A broad form property damage endorsement;
- 7 A provision that the policies be provided on an "occurrence" basis;
- 8 Coverage for XCU (explosion, collapse, underground) hazards if applicable to the work; and
- 9 Products and completed operations coverage.

Umbrella or Excess Liability policies (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Any such policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be "pay on behalf", with defense costs payable in addition to policy limits. There shall be no cross liability exclusion of claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Contractor, subcontractors or others involved in the Work. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Approval of insurance by the City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operation pursuant to the Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

Replace entire section 7-1.06F with:

7-1.06F Policy Forms, Endorsements and Certificates

Provide and maintain current certificates of Insurance on forms supplied by the City and evidencing the above coverage to City prior to execution of this Agreement by City. Exercise due diligence to require any and all subcontractors and/or sub-subcontractors and all tiers of such subcontractors to provide General and Automobile Liability, and Workers' Compensation and Employer's Liability Insurance with minimum limits of coverage and upon terms and provisions required above.

^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^

8 PROSECUTION AND PROGRESS

Add the following to section 8-1.01:

Weekly meetings will be held at the job site to review the progress of the work and discuss any problems that may have occurred. Provide an updated two-week look-ahead schedule at the weekly meeting. The meeting must include, at a minimum:

1. The Engineer;
2. Inspectors; and
3. Contractor foreman.

In addition to daily reports required to substantiate the costs of claims and changes performed as force account work pursuant to Section 4-1.05L and for Disputed Work pursuant to Section 5-1.43A(2) of the City Special Provisions, you must complete a daily report indicating locations worked, start/finish and milestone dates, total manpower per construction trade for each task, major equipment on site, Contractor's manpower and equipment, each subcontractor's manpower and equipment, materials delivered, weather conditions, safety (meetings, inspections, accidents, OSHA citations, actions taken) quality (meetings, inspections, tests), visitors, problems encountered, shortages, delays to planned progress, and any other related information involved in the performance of the work. The daily report must be completed on forms acceptable to the City, and submitted at the end of each workday. The report must comment on the daily progress and status of the work within each major component of the work.

Replace entire section 8-1.02 with:

8-1.02 SCHEDULE

Refer to section 8-1.02D Level 3 Critical Path Method Schedule.

Add to section 8-1.02:

The Contractor shall include utility working windows in the schedule.

Submit two (2) printed copies of updated Construction Schedule bi-weekly and at a minimum with Contractor's monthly progress payment request.

The City may withhold payment for noncompliance with this section.

If the Contractor falls behind the accepted Construction Schedule by more than fifteen (15) percentage points based on earned progress payments, the Contractor must take steps, including, but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of work, and/or amount of construction equipment until such time as the project work is back on schedule. Submit for review no later than the next request for partial payment, such supplementary schedule or schedules as may be deemed necessary to demonstrate the manner in which the rate of progress will be regained. The City does not pay for supplemental schedules or any work necessary to recover performance.

If the Contractor falls behind the accepted construction schedule, as modified by such time extensions as may have been granted by the City for unavoidable delays, by more than thirty-five (35) percentage points based on earned progress payments, the Contractor will be deemed in material breach of Contract and the Work may be turned over to the surety for completion within the Contract Time.

Replace entire section 8-1.03 with:

8-1.03 CONFERENCES AND MEETINGS

8-1.03A Preconstruction Conference

Attend a preconstruction conference at a time and location determined by the Engineer. Those attending the meeting shall include, but not be limited to, the following:

1. The Contractor, including the superintendent who will be supervising the work,
2. Subcontractors,
3. Utilities, and
4. Engineer.

Submit the items in Section 5-1.23.

8-1.03B Progress Meetings

Attend Weekly Project Status Meetings with key personnel, including Contractor's assigned representative and subcontractors' representative. The meeting will have duration of approximately one hour. The meeting shall be held on the same working day of each week and at the same time of the day as mutually agreed to by Engineer and Contractor. The purpose of this meeting shall be to discuss interfacing work, scheduling, problems, issues, and other issues related to the project. If not previously submitted, submit the following to the Engineer at the beginning of the meeting:

1. Daily manpower and equipment utilization and certified payroll for the preceding week; and
2. Projected daily work for the next two weeks.

Replace entire section 8-1.04A with:

8-1.04A Notice to Proceed

Within ten (10) days after the execution of the contract, and receipt of required bonds, insurance, etc., written notice to proceed will be given by the City to the Contractor. Notwithstanding any other provision of the contract, City shall not be obligated to accept or to pay for any work furnished by the Contractor prior to delivery of notice to proceed whether or not the City has knowledge of the furnishing of such work.

Submit the items in Section 5-1.23 in advance of the commencement of the proposed work.

Replace entire section 8-1.04B with:

8-1.04B Start of Job Site Activities

Contractor shall not begin any job site activities until the Notice to Proceed is issued. Notify the City seventy-two (72) hours in advance of commencing job site activities.

Add to the end of section 8-1.06:

Responsibilities of Contractor During Suspension Periods. During periods that Work is suspended, Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the project and public safety and continue to perform in accordance with the safety requirements of the Contract Documents.

Add to the end of section 8-1.07B:

If the Engineer grants an adjustment in time for avoidable delay, the City shall have the right and authority to make deductions in payments due or to become due to the Contractor as the City may deem just and reasonable for engineering, inspection, general supervision and overhead expenses.

8-1.07B(1) Delays to Critical Path

Extensions of time, when granted, will be based upon the effect of delays to the critical path of the Work as a whole and will not be granted for non-controlling delays to included portions of Work unless it can be shown that such delays did, in fact, delay the progress of the Work as a whole.

8-1.07B(2) Conditions to Time Extensions

The Contract Time or Milestones shall be extended only if, in the opinion of City, the Contractor is necessarily delayed in completing the Contract by a cause that meets all of the following conditions:

1. Such cause is beyond the control of Contractor, its Subcontractors, or material suppliers and is not due, in whole or in part, to the breach, negligence or fault of Contractor, its Subcontractors, or material suppliers;
2. Such cause arises after the Bid deadline and neither was nor could have been anticipated before the Bid deadline;
3. The effect of such cause could not be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures by the Contractor, including re-planning, scheduling and re-sequencing;
4. Such cause, in fact, results in a delay in the performance of the critical path of the Work, which is not thereon thereafter recovered;
5. Contractor has given notice thereof and provided the back-up documentation and analysis as required by the Contract Documents or as requested by the Engineer or City including but not limited to as-planned versus as-built schedules; and
6. The Contractor has exercised all reasonable precautions, efforts and measures to accomplish such changes in the Work without extending the date for completion.

8-1.07B(3) Excusable Non-Compensable Delay

The Parties acknowledge that “Force Majeure” events, as defined in Section 1-1.07B, are not within the responsibility or control of the City or are reasonably contemplated by the Parties to occur during the course of performance of the Work, which may impact the schedule for performance of the Work and may entitle Contractor to an extension of the Contract Time (“Excusable Non-Compensable Delays”). If the Critical Path of the Work is delayed by Excusable Non-Compensable Delays, provided that such delays did not result from the acts of Contractor and further provided that Contractor takes reasonable precautions to prevent further delays owing to such causes, then the Contract Time and/or Milestones shall be extended by a Change Order or Construction Change Directive.

An extension to the Contract Time and/or to the completion Milestone(s) identified in the Contract Documents shall be the Contractor's sole remedy for Excusable Non-Compensable Delays. In no event shall Contractor be entitled to any compensation or recovery of any damages in connection with the Excusable Non-Compensable Delays defined above.

8-1.07B(4) Excusable Compensable Delay

“Excusable Compensable Delay” means any delay to the critical path of the Work occurring after commencement and prior to completion of the Work:

1. which directly impacts the number of Working Days established in the Agreement for completion;
2. for which City is responsible, is unreasonable under the circumstances involved, and not within the contemplation of the Parties; and
3. is not due, in whole or in part, to the breach, negligence, or fault of Contractor, its Subcontractors, or Suppliers. Contractor’s remedy for Excusable Compensable Delay shall be extension of the date for completion and Milestones subject to the Conditions to Time Extensions identified above and reimbursement of actual costs directly resulting from such delays and markup in accordance with Section 9.

8-1.07B(5) Inexcusable Delay

“Inexcusable Delay” means any delay in the critical path of activities required for completion of the Work resulting from causes other than those deemed to be an Excusable Non-Compensable Delay or an Excusable Compensable Delay by these City Special Provisions. An Inexcusable Delay shall not entitle Contractor to either an extension of the date for completion or Milestones or to any additional compensation whatsoever.

8-1.07B(6) Concurrent Delays

To the extent the Contractor is entitled to an extension of time due to an Excusable Non-Compensable Delay or to an Excusable Compensable Delay, but the performance of the Work is independently suspended, delayed, or interrupted by an Inexcusable Delay, the delay shall be deemed to be a “Concurrent Delay.”

In the case of a Concurrent Delay, Contractor shall be entitled to an extension of the Contract Time or Milestone(s) and Contractor shall not be entitled to any additional compensation whatsoever during the period of Concurrent Delay.

8-1.07B(7) Claim for Additional Time

Any claim for extension of time shall be made in writing within the time limits provided in Section 5-1.43 herein. Within ten (10) calendar days after commencement of such delay the Contractor shall furnish the Engineer with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract Document references, and the measures taken to prevent or minimize the delay including an as-planned versus as-built schedule. The Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that the City will suffer extreme prejudice should Contractor fail in any way to comply with this requirement.

8-1.07B(8) Limits on Adjustment of Contract Time or Contract Sum for Material Shortages or Cost Escalation

No extension of Contract Time or adjustment of the Contract Price will be granted for a delay caused by a shortage of materials, unless the Contractor furnishes to the City documented proof that the Contractor has diligently made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in completion of the Work which could not be compensated

for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim for adjustment of the Contract Price on the basis that material could not be obtained at a reasonable, practical, or economical cost except as provided in 9-1.07.

Contractor is aware that governmental agencies, such as gas companies, electrical utility companies, water districts and other agencies, may be required to approve Contractor-prepared drawings or approve a proposed installation. Contractor has endeavored to include the cost of such anticipated delays and related costs which may be caused by such agencies in Contractor's Bid. Thus, Contractor is not entitled to make claim upon the City for damages or delays arising from the delays caused by such agencies. Furthermore, the Contractor has scheduled for such delays and is not entitled to an extension of time for delays caused by governmental agencies which Contractor must obtain approvals from. No extension of time will be granted under this Section 8-1.07B for any delay to the extent: (1) that performance would have been so delayed by any Contractor induced causes, including but not limited to the fault or negligence of the Contractor or its Subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of the Contract.

8-1.07B(9) No Release of Sureties

An extension of time granted shall not release the sureties from their obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and the Contract shall be and shall remain in full force and effect during the continuance and until the completion and the City's final acceptance of the Work covered by this Contract unless formally suspended or annulled in accordance with the terms of the Contract Documents.

8-1.07B(10) No Waiver by City

Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work nor the doing and acceptance of any part of the Work or materials specified by this Contract after the time specified for the completion of the Work, shall be deemed to be a waiver of any other rights and remedies under the Contract.

8-1.07B(11) City's Right to Order Extraordinary Measures to Mitigate Delay

In the event of delays to the project, the Engineer may order Extraordinary Measures as provided below.

8-1.07B(11)(a) Non-Compensable Extraordinary Measures

In the event the Engineer determines that the performance of the Work, or any portion thereof, has not progressed or reached the level of completion required by the Contract Documents due to causes within the control of Contractor, the Engineer shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, and (3) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion as required by the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Price in connection with the Extraordinary Measures required by the City under or pursuant to this Section. The City may exercise the rights furnished the City under or pursuant to this Section as frequently as the City deems necessary to ensure that the Contractor's performance of the Work will comply with the Contract Time, or interim completion date set forth in the Contract Documents. If Contractor or its Subcontractors fail to commence Extraordinary Measures within forty-eight (48) hours of

City's written demand, the City may, without prejudice to other remedies, take corrective action at the expense of Contractor.

8-1.07B(11)(b) Compensable Extraordinary Measures

The Engineer, in its discretion, may issue a written request, to the Contractor requesting Contractor to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work, due to no fault of the Contractor, in a form acceptable to the City within ten (10) calendar days after the City's issuance of the request. Contractor's proposal shall be limited to direct labor cost (itemized hours and rates) and overhead and profit on the labor costs.

8-1.07B(12) Continuation of the Work

If the construction of the Work is not completed within the Contract Time, as may be extended by the City, the Contractor shall continue performing the Work in accordance with the Contract Documents until the completion of and the acceptance of the Work, or Contractor's performance is suspended or terminated.

8-1.07C No Early Completion Delay Damages

The Contractor may schedule completion of all of the Work, or portions thereof, earlier than the Contract Time. Contractor, however, shall not be entitled to an adjustment of the Contract Price or to any additional costs or damages (including, but not limited to, claims for extended general conditions costs, home office overhead, jobsite overhead, and management or administrative costs), or any compensation whatsoever for Contractor's use of float and/or Contractor's inability to complete the Work earlier than the Contract Time for any reason whatsoever, including, but not limited to, delay caused by the City or other Excusable Compensable Delay. The City is exempt from liability for such costs, damages, and compensation.

Replace entire section 8-1.10A with:

8-1.10A GENERAL

For each and every day that any portion of the work remains unfinished after the time fixed for completion in the contract documents as modified by any extension of time, damage will be sustained by the City. Because of the difficulty in computing the actual material loss and disadvantage to the City, the Contractor and City agree that Contractor will pay the City the amount of damages set forth herein as representing a reasonable forecast of the actual damages which the City will suffer by the failure of the Contractor to complete the work within the stipulated time. The execution of the agreement shall constitute acknowledgment by the Contractor that he or she has ascertained and agrees that the City will actually suffer damages in the amount herein fixed for each and every day during which the completion of the work is avoidably delayed beyond the stipulated completion date.

Unless otherwise provided in the contract documents, the Contractor shall have no claim or right of action against the City for damages, costs, expenses, loss of profits, or otherwise because or by reason of any delay in the fulfillment of the contract within the time limited therefore occasioned by any cause or event within or without the Contractor's control, and whether or not such delay may have resulted from anything done or not done by the City.

Liquidated damages for all work shall be in the amount of \$1000.00 for each consecutive calendar day in excess of the time specified for completion of the work.

Add the following to the end of 8.13:

8-1.13A TERMINATION BY THE CITY FOR CAUSE

8-1.13A(1) Grounds

The City shall have the right to terminate the Contractor's performance of the Work, in whole or in part, if:

1. Contractor fails to promptly commence the Work or unnecessarily or unreasonably delays the Work or improperly discontinues the diligent prosecution of the Work or abandons the Work;
2. Contractor refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to perform the Work in strict accordance with the Contract Documents, and the latest accepted schedule;
3. Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from the City;
4. Contractor disregards applicable laws, statutes, ordinances, codes, rules, regulations, or lawful orders of a public authority;
5. Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from the City to do so or (if applicable) after cessation of the event preventing performance;
6. Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument, or other document delivered by Contractor pursuant to the Contract Documents shall have been false or materially misleading when made;
7. After commencement of the Work the City becomes aware that the Contractor is using an ineligible contractor, subcontractor, or supplier who was barred from performing work or providing materials or services on City projects at the time of Bid;
8. Contractor fails to make payment to Subcontractors for materials or labor in accordance with the respective Contract Documents and applicable law;
9. The Contract is assigned or the Work is sublet otherwise than as specified in the Contract Documents;
10. Contractor otherwise is guilty of breach of a provision of the Contract Documents; or
11. Contractor materially fails to execute the Work in accordance with the Contract Documents or, in the City's opinion, is violating any of the terms of the Contract or is not executing the Contract in good faith or is not following instructions of the City as to additional force necessary in the opinion of the City for its completion within the required time.

8-1.13A(2) City's Rights Upon Termination of Contract for Cause: Notice to Cure and Notice of Termination for Default

When any of the reasons specified above exist, the City may, in addition to and without prejudice to any other rights or remedies of the City, issue a written notice to cure the default to the Contractor and its surety. The Contractor shall commence satisfactory corrective actions within five (5) working days after receipt of the notice to cure. If the Contractor fails to commence satisfactory corrective work within 5 working days after receipt of the notice to cure, or to diligently continue satisfactory and timely correction of the default thereafter, the City will advise the performance bond surety of the default and that surety will be given fifteen (15)

calendar days to arrange for completion of the Work in accordance with the Contract Documents by another contractor or contractors satisfactory to the City. Should the surety fail to effect satisfactory arrangements within said 15-day period, the City shall have the right to issue a notice of termination for default and to:

1. Exclude the Contractor from the Site;
2. Take possession of the Site and of all materials, equipment, tools and construction equipment, and machinery thereon owned by the Contractor;
3. Suspend any further payments to Contractor;
4. Accept assignment of subcontracts pursuant to Section 5-1.13C; and
5. Finish the Work by whatever reasonable method the City may deem expedient.

When the City terminates the Contractor's performance of the Work for one of the reasons stated in this Section 8-1.13, the Contractor shall not be entitled to receive further payment until the Work is finished.

The City shall charge the cost to complete the Work, including, but not limited to, protection, investigation, labor, services, equipment, materials, permits, fees, supervisory, and administrative costs to Contractor and its performance bond surety. If the unpaid balance of the Contract Price is less than all costs of finishing the Work, including compensation for the City's services and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, the Contractor shall pay the difference to the City. This obligation for payment shall survive termination of the Contract. If the unpaid balance of the Contract Price is greater than all costs of finishing the Work, including compensation for the City's services and expenses made necessary thereby, the Contractor shall receive payment for Work properly performed by Contractor for which payment was not made previously; any excess amounts shall be retained by the City.

Upon receipt of the written notice of termination for default, the surety shall immediately assume all rights, obligations and liabilities of the Contractor under the Contract. If the surety fails to protect and maintain the work site, the City may do so, and may recover all costs incurred. The surety shall notify the City that it is assuming all rights, obligations and liabilities of the Contractor under the Contract. Within 15 working days of receipt of the written notice of termination for default, the Surety shall submit to the City a written plan detailing the course of action it intends to take to remedy the default. The City will review the plan and notify the surety if the plan is satisfactory. If the surety fails to submit a satisfactory plan, or if the surety fails to maintain progress according to the plan accepted by the City, the City may, upon 48 hours written notice, exclude the Surety from the premises, take possession of all material and equipment, and complete the Work in any way the City deems to be expedient. The cost of completing the Work by the City shall be charged against the surety and may be deducted from any monies due, or which would become due, the surety. If the amounts due under the Contract are insufficient for completion, the surety shall pay to the City, within 30 days after the City submits an invoice, all costs in excess of the remaining Contract Price. The Surety will be paid for completion of the Work in accordance with Section 9 below, less the value of damages caused to the City by acts of the Contractor.

8-1.13A(3) Erroneous Termination

If it has been adjudicated or otherwise determined that the City has erroneously or negligently terminated the Contractor for cause, then said termination shall automatically convert to a termination by the City for convenience as set forth in Section 8-1.13B.

8-1.13A(4) Acceptance of Incomplete or Non-Conforming Work

In lieu of the provisions of this Section for terminating the Contractor's performance, the City may pay the Contractor for the portion of Work completed according to the provisions of the Contract Documents and may treat the incomplete Work as if they had never been included or contemplated by this Contract, in which case the Contract Price will be reduced by the value of the deleted Work determined in accordance with Section 4-1.05M. The City may also exercise its rights under Section 6-3.07F relating to Acceptance of Nonconforming Work. No claim under this provision will be allowed the Contractor for overhead or prospective profits on Work not completed by the Contractor.

8-1.13A(5) Adequate Financial Assurances

It is recognized that if Contractor is adjudged a bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of Contractor's insolvency, this could impair or frustrate Contractor's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, the City shall be entitled to request of Contractor, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within five (5) calendar days of delivery of the request shall entitle the City to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate occurrence of performance and actual performance in accordance therewith, the City shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Price.

8-1.13B Termination by the City for Convenience

The City may, at any time, terminate the Contractor's performance of the Work, in whole or in part, for the City's convenience without regard to Contractor's fault or breach upon fourteen (14) calendar days' written notice to Contractor.

In the event that the City terminates Contractor's performance of the Work for convenience, Contractor agrees to waive any claims for damages, including, but not limited to, home office overhead, loss of anticipated profits on account thereof, and as the sole right and remedy of Contractor, the City shall pay Contractor in accordance with Section 8-1.13G below. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to the extent provided in such provisions.

8-1.13C Contractor's Duties Upon Termination

Upon receipt of written notice from the City of such termination for cause or for the City's convenience, the Contractor shall, unless the notice directs otherwise, do the following:

1. Cease performance of the Work to the extent specified in the notice;
2. Cooperate with the City to secure the site and demobilize in a safe and orderly fashion;
3. Take actions necessary, or that the City may direct, for the protection and preservation of the Work;

4. Except for Work directed to be performed in the notice, incur no further costs and enter into no further subcontracts and purchase orders;
5. If requested by the City, assign to the City, in the manner and to the extent directed, all of the right, title and interest to the Contractor under the subcontracts, and the City shall have no liability for acts, omissions or causes of action resulting therefrom which accrued prior to the date of termination and assignment, which liability shall remain with the Contractor; and
6. Turn over to the City, as soon as possible, but not later than thirty (30) days after receipt of such termination notice, the originals of all of the Contractor's records, files, documents, drawings and any other items relating to the project, whether located on the project site, at the Contractor's office or elsewhere.

^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^^

9 PAYMENT

Replace entire section 9-1.16A with:

After award of contract, the Engineer will establish a closure date for the purpose of making monthly progress payments. The Contractor may request in writing that such monthly closure date be changed. The Engineer may approve such request when it is compatible with the City's payment procedure.

Progress payments will be made monthly by the City after receipt of a properly completed request from the Contractor. The Contractor shall submit all such requests for monthly progress payments, and shall include the following forms as applicable:

Form: Progress Payment Request

This form is to be completed and signed by the Contractor and attached as a cover sheet to the request for payment. This form will be mandatory on all contract payment requests.

Form: Progress Payment Request - Detail

This form may be used by the Contractor to provide the detail required to verify the payment quantities. (City will accept the Contractor's standard form if it provides the required information.)

Form: Quantity Change Verification Form

This form is required before any payment can be made based on actual quantities exceeding bid quantities. At the conclusion of the contract, the City will issue a "Balancing Change Order" incorporating all quantity increases and decreases in the contract items of work.

Form: Final Release Form

This form must accompany all requests for final payment.

Form: Post-Construction Waste Reduction and Recycling Summary Report

This form must accompany all requests for final payment.

9-1.16A Applications for Payment

9-1.16A(1) General

Based upon Applications for Payment submitted to the Engineer by the Contractor, the City shall make progress payments to the Contractor as provided below and elsewhere in the Contract Documents.

The period covered by each Application for Payment shall be one calendar month ending on the 20th day of the month.

The Contractor shall submit each Application for Payment to the Engineer by the last day of each month.

Pursuant to Section 9-1.02 above, Contractor's Applications for Payment shall be based on the actual installed quantities for payment.

Applications for Payment shall indicate the percentage of completion of each portion of the Work for which a lump sum price is specified as of the end of the period covered by the Application for Payment.

9-1.16A(2) Applications for Payment

Contractor shall submit to the Engineer an Application for Payment (on a form provided by the Engineer) for Work completed in accordance with the measurement of quantities. Such application shall be supported by such data substantiating the Contractor's right to payment as the Engineer may require.

By submitting an Application for Payment, the Contractor warrants that all Work has been performed in compliance with the Contract Documents, and that all quantities and amounts set forth therein accurately reflect the amount of Work completed during that pay period.

Each Application for Payment shall be reviewed by the Engineer as soon as practicable after receipt for the purpose of determining that the Application for Payment is a "proper" payment request, accurately reflecting the value of Work completed and submitted with the documents required by the Contract Documents. An Application for Payment shall be deemed "proper" only if it is properly completed and submitted on the proper forms. The Engineer shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any Application for Payment.

The City shall make payment to the Contractor not later than thirty (30) calendar days after the Engineer's verification and approval that an Application for Payment is undisputed and properly submitted.

9-1.16A(3) Payments for Authorized Changes

Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Orders and by Construction Change Directives, which shall be itemized separately from base Contract Work.

9-1.16A(4) No Requests for Disputed Subcontractor Work

Applications for Payment shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason, or as to which an appropriate stop payment notice release has not been filed.

9-1.16A(5) City Review and Payment

This Contract is subject to the following provisions of California Public Contract Code Section 20104.50 which provides as follows:

- (a)(1) It is the intent of the Legislature in enacting this Section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.

(2) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all governmental officials, including those in local government, must set a standard of prompt payment that any business in the private sector that may contract for services should look toward for guidance.
- (b) Any local agency which fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted payment request from a Contractor or construction Contract shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of § 685.010 of the Code of Civil Procedure.
- (c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:
 - (1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt of the purpose of determining that the payment request is a proper payment request;
 - (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this Section shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.
- (d) The number of days available to a local agency to make a payment without incurring interest pursuant to this Section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).
- (e) For purposes of this Article:
 - (1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.
 - (2) A "progress payment" includes all payments due Contractors, except that portion of the final payment designated by the Contract as retention earnings.
 - (3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and the Financial Officer of the local agency does not delay the payment due to an audit inquiry.
- (f) Each local agency shall require that this article, or a summary thereof, be set forth in the terms of any Contract subject to this Article.

9-1.16A(6) Improper Application for Payment

In accordance with Section 20104.50 of the California Public Contract Code, any Application for Payment determined by the Engineer not to be a proper payment request, suitable for payment, shall be returned to the Contractor as soon as practicable, but not later than seven (7) calendar days after receipt by the Engineer. An Application for Payment returned to the Contractor shall be accompanied by written documentation setting forth the reasons why the Application for Payment is not proper and not suitable for payment. If an Application for Payment is so returned as improper, no payment will be due the Contractor. The City reserves the right to make partial payment of undisputed amounts.

9-1.16A(7) Interest on Undisputed Amounts

If the City fails to make any progress payment within thirty (30) calendar days after receipt of an undisputed and proper Application for Payment from the Contractor, the City shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. The number of days available to the City to make a payment without incurring interest shall be reduced by the number of days by which the Engineer exceeds the seven (7) day return requirement set forth above.

9-1.16A(8) Contractor Warranty of Title to Work

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the City shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. This provision shall not relieve the Contractor from the responsibility for materials and Work upon which payments have been made, the restoration of damaged Work or as waiving the right of the City to require the fulfillment of the terms of the Contract.

Each time the Contractor submits an Application for Payment, the Contractor hereby certifies that each Application for Payment is complete and accurate regarding the quantities and amounts stated in the application, and that all Work for which the Contractor seeks payment have been provided in a manner that meets or exceeds the Contract's requirements.

CITY OF GOLETA, CA
Public Works Department
Construction Contract
Progress Payment Request

From:

Date: _____

 Contractor

Contract No.: _____

Payment Request No.: _____

 Address

To:

CITY OF GOLETA
 Public Works Department
 130 Cremona Drive, Suite B
 Goleta, California 93117

Project Name:
 San Jose Creek Channel Emergency Repair
 Project – PROJECT NO. FEMA 4308

Original Contract Amount:	\$
Approved Change Orders through #: _____	\$
Quantity Changes:	\$
(Requires Project Engineer verification)	
Total Contract Amount to Date:	\$

Value of Work Completed to Date:	\$
Less Retention:	\$
Less Liquidated Damages:	\$
Subtotal:	\$
Less Previous Payments Approved:	\$
Progress Payment Requested:	\$

The undersigned Contractor or Contractor's Authorized Representative certifies that to the best of his or her knowledge, information and belief, the work covered in this application for payment has been completed in accordance with the contract documents and the costs shown are true and correct.

 Signature

 Print Name

 Title

 Date

CITY OF GOLETA, CA
Public Works Department

Construction Contract
Progress Payment Request - Detail

Date: _____ Payment Request No: _____ Contract No.: _____

Contractor: _____

Project Name: San Jose Creek Channel Emergency Repair Project – PROJECT NO. FEMA 4308

Payment Period Through Date: _____

ITEM NO.	DESCRIPTION	UNIT	BID QUANTITY	UNIT/ FIRM PRICE	IN THIS PERIOD		IN TOTAL	
					QTY. OR %	PLACE EXTN.	QTY. OR %	PLACE EXTN.
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								

Contractor Signature

Date

Inspector Signature

Date

CITY OF GOLETA, CA
Public Works Department
Quantity Change Verification Form

Date:

Contract No.:

Contractor:

Project Name:

San Jose Creek Channel Emergency
 Repair Project – PROJECT NO.
 FEMA 4308

INSTRUCTIONS

This form is to accompany progress payments where there is quantity changes (variations in quantities authorized as part of the progress or final payment.

The quantity changes in amount of \$_____ accompanying Progress Payment #_____ have been reviewed and actual quantities verified.

Project Engineer Signature

Date

Bid Item #	Item Description	Variance	Total

ATTACH ADDITIONAL SHEETS IF NECESSARY

Contractor Signature

Inspector Signature

Date

Date

CITY OF GOLETA, CA
Public Works Department

Construction Contract
Final Release Payment

From: _____
Contractor

Date: _____

Contract No. _____

Address

Payment Request No. _____

Project Name: San Jose Creek Channel
Emergency Repair Project – PROJECT NO.
FEMA 4308

To: CITY OF GOLETA
Public Works Department
City Hall
130 Cremona Drive, Suite B
Goleta, California 93117

Upon settlement of final quantities and approval of a Notice of Completion for the project by the Goleta City Council, including any approved changes, this document shall be effective to release any and all further rights of the Contractor to security for payment, that the undersigned may have for the work furnished for the project. This document is offered as evidence for settlement of final payment and to induce the City Council to approve such final payment for Contractor in connection with the **San Jose Creek Channel Emergency Repair Project – PROJECT NO. FEMA 4308.**

This release covers the final payment to the undersigned for all labor, services, equipment and material furnished on the job, including the work of all subcontractors and all materials furnished for all suppliers, and other agents acting on behalf of the undersigned on this work. There are no disputed claims for additional work.

Contractor Signature:

Print Name:

Title:

Date:

NOTICE: A signed final release is required with submittal of request for payment.

Post-Construction Waste Reduction & Recycling Summary Report

Diversion Requirement: Reduce quantity of materials disposed at landfills by 65% or more.

Column A: List estimated quantities of waste for each material type (in tons). To convert material quantities to tons, use the Materials Conversion Worksheet provided in your packet.

Columns B, C, D: List estimated quantities reused, recycled, or disposed.

Column E: State the name of all vendors or facilities to be used to reuse, recycle or dispose of material listed. See example below for cases where more than one facility will be used for a particular material type.

Column Totals: Add up all quantities listed in Column A. Do the same for Columns B, C and D.

Waste Reduction & Recycling Summary REPORT (WRRS Report)

Material Handling Methods - Indicate quantities (in tons only) for each material listed.					
Material Type	<u>A</u> Total Tons Generated (A=B+C+D)	<u>B</u> Quantity Salvaged or Reused	<u>C</u> Recycling	<u>D</u> Estimated Disposal	<u>E</u> Anticipated Material Destination(s) (R): Recycled; (D): Disposal
Example: Cardboard	2 tons		1.5	.5	(R) MarBorg (D) Tajiguas Landfill
Asphalt & Concrete					
Brick/Masonry/Tile					
Building Materials (doors, windows, fixtures, etc.)					
Carpet					
Carpet padding/Foam					
Cardboard					
Ceiling tile (acoustic)					
Dirt					
Drywall (used)					
Drywall (new, unpainted sheets or scrap)					
Landscape Debris (brush, trees, stumps, etc.)					
Scrap metal					
Unpainted Wood and Pallets					
Garbage/Trash					
Other					
Recycled mixed debris					
Column Totals					

7. To determine if the required 65% project waste reduction will be met, complete the following with the column totals: B _____ + C _____) / A _____ = _____ x 100 = _____ %

8. Is the percentage listed in #7 greater than or equal to 65%? ☐ YES ☐ NO - If "NO" please explain why:

9. Print Name: _____ Signature: _____ Date: ____ / ____ / ____

Replace entire section 9-1.16E(2) with:

9-1.16E(2) Progress Withholds

The City will withhold five (5) percent of all monthly progress payments as retention to assure completion and payment of labor and materials. Retention will be released to the Contractor sixty (60) days after acceptance of the work by the City Council and the filing of a Notice of Completion.

In accordance with Public Contract Code Section 22300, securities shall be permitted in substitution of money withheld by the City to ensure performance under this contract.

At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

Alternatively, the Contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities and the Contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the Contractor. Upon satisfactory completion of the contract, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the City, pursuant to the terms of this section.

Securities eligible for investment under this paragraph shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City. The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

If an escrow agreement is used as security, it shall be null, void and unenforceable unless it is substantially similar to the form stated in Public Contract Code Section 22300.

Replace entire section 9-1.16E(4) with:

The City may withhold payments to cover claims filed under Civil Code § 9000 et seq.

Stop payment notice information may be obtained from City.

If at any time there shall be evidence of the existence, whether or not same has been asserted, of any mechanics lien, stop payment notice, or claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Contractor to perform this Contract, and if the City might become liable for the discharge of or satisfaction of such mechanics lien, stop payment notice, or claim, then the City shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient to discharge such mechanics lien or stop payment notice or satisfy such claim and to reimburse the City and the representatives of the City for all costs and expenses in connection therewith, including attorneys' fees. Further, the City, in its sole discretion, shall have the right to discharge or satisfy such mechanics lien, stop payment notice, or claim and pay all costs and expenses in connection therewith if the Contractor does not have such mechanics lien, stop payment notice, or claim discharged or satisfied within ten (10) calendar days after receiving notice thereof from the City or unless some other procedure for discharge or satisfaction of such lien or claim is agreed upon between the City and Contractor. If the amounts retained are insufficient for the aforesaid purposes, or if such mechanics lien, stop payment notice, or claim remains undischarged or unsatisfied after all payments have been

made to the Contractor, then the Contractor shall refund to the City all monies that may have been paid to discharge such lien or stop payment notice or satisfy such claims, including the costs, expenses, and attorneys' fees in connection therewith.

If the Contractor or a Subcontractor disputes the correctness or validity or enforceability of any stop payment notice, the City may, in its discretion, permit the Contractor to file with the City a bond, on a form provided by the City, executed by one or more corporate California admitted surety insurers, in an amount equal to one hundred and twenty-five percent (125%) of the claim stated in the stop payment notice conditioned for the payment of any sum which the stop payment notice claimant may recover on the claim together with its costs of suit in the action. Upon the City's acceptance of such bond, the City shall not withhold money from the Contractor on account of the stop payment notice. The surety(ies) upon the stop payment notice release bond shall be different than, and jointly and severally liable to the stop payment notice claimant with, the payment bond surety(ies).

If a Subcontractor or material supplier refuses to furnish a release or waiver required by the City, records a mechanics lien, or files a stop payment notice, the Contractor shall, upon the City's request, furnish a bond satisfactory to the City to release the stop payment notice and shall otherwise fully indemnify the City against such stop payment notice and the City shall enforce its right under the preceding paragraph.

Any lien, stop payment notice, or other claim, filed or asserted after the Contractor's acceptance of the final payment, by any Subcontractor, laborer, material supplier, or others, in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor, who further agrees to indemnify, defend, and hold harmless the City and its council members, officers, agents and employees from and against any claims, demands, or judgment arising out of or associated therewith, including, without limitation, attorneys' fees incurred by the City in connection therewith.

Replace entire section 9-1.16E(4) with:

The City will withhold 5 percent of all progress payments as retention (Public Contract Code § 7201). Unless otherwise required under applicable law, retention will be paid to you on the final payment.

Add new section 9-1.16G with:

9-1.16G Release of Retention

This Contract is subject to the following provisions of California Public Contract Code § 7200 which provides as follows:

(a)(1) This section shall apply with respect to all Contracts entered into on or after January 1, 1999, between a public entity and an original Contractor, between an original Contractor and a Subcontractor, and between all Subcontractors thereunder, relating to the construction of any public Work of improvement.

(2) For purposes of this Section, "public entity" means the state, including every state agency, office, department, division, bureau, board, or commission, a city, county, city and county, including chartered cities and chartered counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) In a Contract between the original Contractor and a Subcontractor, and in a Contract between a Subcontractor and any Subcontractor thereunder, the percentage of the

retention proceeds withheld may not exceed the percentage specified in the Contract between the public entity and the original Contractor.

(c) When a performance and payment bond is required in the solicitation for bids, subdivision (b) shall not apply to either of the following:

(1) The original Contractor, if the Subcontractor fails or refuses to provide a performance and payment bond issued by an admitted surety insurer, to the original Contractor.

(2) The Subcontractor, if a Subcontractor thereunder fails or refuses to provide a performance and payment bond issued by an admitted surety insurer, to the Subcontractor.

(d) No party identified in subdivision (b) shall require any other party to waive any provision of this Section.

(e) In the event that the Contractor elects to substitute securities in lieu of retentions, the Contractor may withhold from its Subcontractors, who have not elected to substitute securities in lieu of retentions, the amount of retentions that would have otherwise been withheld.

9-1.16H Payments to Subcontractors

The Contractor shall pay each Subcontractor, no later than seven (7) calendar days after receipt of payment from the City the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Subcontractors in a similar manner. Contractor shall obtain and submit releases on City-approved forms for any payment made to Subcontractors and suppliers.

9-1.16I City's Right to Disburse Progress and Final Payments by Joint Check or Direct Payments

The City has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the City to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the City shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. The City shall not have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. The City may, in its sole discretion, issue joint checks to the Contractor and its Subcontractors of any tier and material suppliers or to make payments directly to such Subcontractor or supplier in satisfaction of City's obligation to make progress payments or the final payment due hereunder.

Add the following to the end of section 9-1.17B:

9-1.17B(1) Affidavit of Final Completion and Final Payment

The Contractor shall, upon completion of the Work and final cleaning up, submit to the City a sworn Affidavit of Final Completion on a form provided by the Engineer. Properly submitted Claims in stated amounts may be excluded by the Contractor from the operation of the release if the Claims have not yet been resolved. Within thirty (30) calendar days after receipt of the Affidavit of Completion, the Engineer will inspect the Work and will either (1) reject the requested Affidavit of Final Completion, specifying the defective and/or uncompleted portions of the Work, or (2) accept the Affidavit of Final Completion and submit a request to the City Council for final acceptance of the Work.

9-1.17B(2) Rejection and Revision

If the City rejects the Affidavit of Final Completion, specifying defective and/or uncompleted portions of the Work, the Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, the Contractor shall give the City a revised Affidavit of Final Completion with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure shall apply successively thereafter until the City accepts Contractor's Affidavit of Final Completion.

9-1.17B(3) Documentation

In addition to the requirements for final payment set forth in the other Contract Documents, the final payment shall not become due until at least sixty (60) calendar days after: (i) Contractor has fully performed the Contract, including all punch list work; and (ii) Contractor has submitted to the City:

1. A full, complete and proper Final Application for Payment showing the proposed total amount due the Contractor, segregated as to Contract quantities, changes in the Work, and other basis for payments; deductions made or to be made for prior payments; amounts to be retained; any Claims the Contractor intends to file at that time or a statement that no Claims will be filed; and any unsettled Claims, stating amounts;
2. Written consent of surety(ies) to partial/full release of retention/final payment;
3. Contractor's written assurance that identified corrective work not complete and accepted will be completed by a stated date agreeable to the City;
4. The required As-Builts (in reproducible format);
5. Reasonable proof that taxes, fees and similar obligations of Contractor have been paid;
6. Documentation that Contractor has inspected, tested, and adjusted performance of every system or facility of the Work to ensure that overall performance is in compliance with terms of the Contract Documents;
7. Reasonable proof that Contractor has discontinued and removed temporary facilities and services from the Site, along with construction tools and facilities, forms, and similar items except for Contractor's field office;
8. Reasonable proof that Contractor has provided instruction for the City's operating personnel on systems and equipment operational requirements;
9. A report on performance of completed installations after adjustment that appear unable to comply with the requirements of the Contract Documents;
10. The operating manuals for operating and maintaining the Work; and
11. Four (4) copies of all warranties from vendors and Subcontractors, operation and maintenance manuals, instructions and related agreements, equipment certifications and similar documents, and maintenance and operating instructions.

The Engineer reserves the right to not require any of the above submittals which the Engineer determines, in his/her sole discretion, is not applicable to a particular project.

9-1.17B(4) Disbursement of Final Payment

Pursuant to California Public Contract Code section 7107, if there is any dispute between the City and the Contractor at the time that disbursement of the final payment is due, the City may

withhold from disbursement of the final payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

9-1.17B(5) No Waiver of Claims by City

The making of final payment shall not constitute a waiver of any Claims by the City including, but not limited to:

1. unsettled stop payment notices;
2. faulty or defective Work;
3. failure of the Work to comply with the requirements of the Contract Documents;
4. terms of special warranties required by the Contract Documents; or
5. any other cause, unless specifically waived by the City in writing.

9-1.17B(6) Waiver of Claims by Contractor, Subcontractors, and Suppliers

Acceptance of final payment by the Contractor, a Subcontractor, or a material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

Delete section 9-1.22:

~~~~~

## DIVISION II GENERAL CONSTRUCTION

## 10 GENERAL

**Replace section 10-1 with:**

## 10-1 GENERAL

## 10-1.01 GENERAL

## 10-1.01A Daily Report

On a form acceptable to the Engineer, and at the end of each workday, submit Daily Report indicating manpower, major equipment used and on standby (itemized separately), subcontractors, materials used, bid items and quantities completed, and similar items involved in the performance of the Work.

### 10-1.01B Night Construction Lighting

Section 10-1.01B applies to contract with planned or proposed night work.

Provide adequate lighting for any night work performed such that there is no difference between the quality of night and day work. A minimum of four portable self-contained light towers shall be provided for each street. One light tower shall be provided for each 150 lineal feet of street centerline within the active work zone. When the length of street work zone is in excess of 500 lineal feet, you may provide 7 light towers to be moved as the work progresses.

**Add to section 10-1.02:**

Do not start job site activities until the City authorizes or accepts your submittal for:

1. Traffic Control Plan;
2. WPCP;
3. Schedule;



plastic tape labeled "Caution" shall be used to delineate all open trenches or abrupt drops within the construction area. Steel plates shall be used to cover open trenches within five feet of any public traffic or deeper than three feet.

**Add to section 12-1:**

**12-1.05 SUBMITTALS**

Submit traffic control plan.

Each drawing and calculation sheet must be in black ink and sequentially numbered.

Each drawing sheet must:

1. Be 11 by 17 inches
2. Be on minimum of 20 lb. paper
3. Have text of minimum nominal height of 5/32 inch
4. Sealed and signed by an engineer who is registered as a civil engineer in the State.

Allow 10 days for review.

**Add to Section 12-3 Traffic Handling Equipment and Devices:**

Traffic control devices not placed in accordance with approved plans shall be cause to stop construction by the Engineer.

If any component in the traffic control system is damaged, displaced, or ceases to operate or function as specified, from any cause, during the progress of the work, the Contractor shall immediately repair said component to its original condition or replace said component and shall restore the component to its original location. Failure by the Contractor to continuously maintain the approved traffic control devices shall be sufficient cause for the Engineer to stop all work protected by or associated with such approved traffic control devices.

All warning devices used during hours of darkness shall be reflectorized.

The Contractor shall furnish and post signs where necessary to inform the public about closures or restrictions at parking area entrances.

The Contractor shall have a sufficient cache of extra signs available at or near the project site to erect additional signs requested by the Engineer during the course of the work.

Each vehicle used to place, maintain and remove components of a traffic control system on multi-lane roadways shall be equipped with a Type II flashing arrow sign which shall be in operation when the vehicle is used for placing, maintaining or removing said components. The sign shall be controllable by the operator of the vehicle while the vehicle is in motion. The flashing arrow sign shown on the Standard Plans shall not be used on the vehicles which are doing the placing, maintaining, and removing, and shall be in place before a lane closure requiring its use is completed.

When traffic cones or delineators are used to delineate a temporary edge of traveled way, the line of cones or delineators shall be considered to be the edge of the traveled way. However, the Contractor shall not reduce the width of an existing lane to less than ten (10) feet without written approval from the Engineer. The provisions of this paragraph shall not apply to a work area protected by a permanent or temporary railing or barrier.

All traffic control equipment shall be of standard size unless reduced sizes are specifically approved by the Engineer and shall conform to the provision of the Manual on Uniform Traffic Control Devices and the California supplement.

## Trench Plates

All trench plates placed by the Contractor in the traveled way (both vehicular and Pedestrian) shall have a slip resistant surface and be ramped with Asphalt Concrete.

## Delete section 12-3.01C Construction

**Add to section 12-3.01D Payment:**

Furnishing all labor including flagging costs, materials (including signs), tools, equipment, and incidentals, and for doing all the work involved in placing, removing, storing, maintaining, moving to new locations, replacing, and disposing of the components of the traffic control is included in the payment for Traffic Control System.

Payment for slip resistant surface on traffic plates is included in the unit prices paid for the various items of work, which require trench plating.

**Add to section 12-4 Maintaining Traffic:**

## 12-4 GENERAL

Except as otherwise provided, the full width of the traveled way shall be open for use by public traffic on Saturdays, Sundays, and designated legal holidays and when construction operations are not actively in progress.

Minor deviations from the requirements of this section concerning hours of work which do not significantly change the cost of work may be permitted upon the written request of the Contractor if, in the opinion of the Engineer, public traffic will be better served and the work expedited. Such deviations shall not be adopted until the Engineer has indicated approval. All other modifications will be made by contract change order.

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

## 14 ENVIRONMENTAL STEWARDSHIP

**Add to section 14-9.03A DUST CONTROL General:**

The Contractor shall implement the following measures during construction or demolition activities:

- Use water trucks or sprinkler systems to keep areas of vehicle movement damp to prevent dust from leaving the site.
- Minimize amount of disturbed area and reduce on-site vehicle speeds to 15 miles per hour or less.
- For fill material, cover, keep moist, or treat soil stock piled for more than two days, and tarp trucks transporting fill material to and from the site.
- Install gravel pads at access points to prevent tracking of mud onto public roads.
- After clearing, grading, earth moving or excavation is completed, treat the disturbed area by watering, re-vegetating, or by spreading soil binders until the area is paved or otherwise developed.

Dust Control shall be included in the various items of work and no separate payment will be made.

## 14-10.02A(1) Submittals

Submit with your request for final payment, a Post-Construction Waste Reduction and Recycling Summary Report documenting the types and amounts of materials that were used during the project and how much was reused, recycled, composted, salvaged, or landfilled.

[illegible]

## 17 WATERING

Goleta Water District will furnish a temporary construction water meter to the Contractor upon completion of an application and payment of a non-refundable application fee. The Contractor will be billed a monthly meter rental fee and a temporary water rate. All deposits and fees may be verified at the Goleta Water District, 4699 Hollister Avenue, Santa Barbara, CA 93110. Goleta Water District will refund the deposit upon return of the water meter(s), provided that it is in good operational order. Contractor is responsible for verifying current fees or other procedures for obtaining water for construction from GWD. Reclaimed water meters will be used for connection to the Contractor's water truck, and the potable water meters will be used for connection to a City fire hydrant.

[illegible]

**Add to section 19-1.01A:**

Earthwork activities include clearing and grubbing, developing a water supply, and finishing the roadway. Comply with sections 16, 17-2, and 22.

Dispose of surplus material. Ensure enough material is available to complete the the work before disposing of it.

Obtain authorization and haul route permit before disposing of any surplus material.

[illegible]





**CITY OF GOLETA  
SPECIAL PROVISIONS  
SAN JOSE CREEK CHANNEL EMERGENCY REPAIR PROJECT –  
PROJECT NO. FEMA 4308**

The various portions of the Contract Documents have been prepared under the direction of the following licensed Civil Engineer, in accordance with California Business and Professions Code §6735.



Civil Design

**Prepared by:**

August 28, 2017

Registered Civil Engineer

Date

**Approved by:**

August 28, 2017

Rosemarie Gaglione, PE

Date

Director of Public Works, City of Goleta

This Page Intentionally Left Blank

## **SECTION F**

### **SPECIAL PROVISIONS**

#### **ORGANIZATION**

Special provisions are under headings that correspond with the main-section headings of the *Standard Specifications*. A main-section heading is a heading shown in the table of contents of the *Standard Specifications*.

Each special provision begins with a revision clause that describes or introduces a revision to the *Standard Specifications* as revised by any revised standard specification.

Any paragraph added or deleted by a revision clause does not change the paragraph numbering of the *Standard Specifications* for any other reference to a paragraph of the *Standard Specifications*.



#### **DIVISION I GENERAL PROVISIONS**

##### **1 GENERAL**

The work embraced herein shall conform to the provisions in the 2010 Standard Specifications and the 2010 Standard Plans of the California Department of Transportation insofar as the same may apply, and these special provisions. These special provisions incorporate by reference the County of Santa Barbara Standard Details and the County of Santa Barbara Standard Specifications.

In case of conflict, the Standard Details of the County of Santa Barbara take precedence over the County of Santa Barbara Standard Specifications, which take precedence over the plans, the Caltrans Standard Plans and the Caltrans Standard Specifications.

Whenever the following terms occur in the Caltrans Standard Plans and Caltrans Specifications, the meaning shall be interpreted as follows:

State of California – The City of Goleta

Department of Transportation – The Engineering Division of the City of Goleta

Division of Highways – The Engineering Division of the City of Goleta

Director – The Public Works Director of the City of Goleta

Engineer – The Public Works Director of the City of Goleta, acting, either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Add to section 1-1.01:

Note Regarding Quantities Shown on the Bidding Sheet and Bid Items shown below.

Prior to the beginning of this project The City plans to proceed with removal of some of the Articulated Slope Revetment prior to this contract, using a limited budget contract vehicle to start work. This effort was undertaken to remove the worst portions of the damaged ASR, to increase the channel capacity, to minimize risk to the public. For this contract, the prior work will be called “The initial response contract”.

At the time these plans were prepared, the “initial response contract” had not begun. Therefore engineers could not measure or estimate that amount of the ASR which would be removed in that “initial response contract”, to determine the amount of ASR which will be on site when this contract begins.

Prior to starting any work for this contract, the Engineer and the Contractor shall work together to measure—and agree—on the pay quantities for this project.

No adjustments will be made in the unit prices—just the measurement of the quantities will be verified.

### Bid Items and Applicable Sections

| Item code | Item description                                                                                                          | Applicable section |
|-----------|---------------------------------------------------------------------------------------------------------------------------|--------------------|
| 120090    | CONSTRUCTION AREA SIGNS                                                                                                   | 12                 |
| 130100    | JOB SITE MANAGEMENT                                                                                                       | 13                 |
| 130200    | PREPARE WATER POLLUTION CONTROL PROGRAM                                                                                   | 13                 |
| 153220?   | REMOVE EXISTING ARTICULATED SLOPE REVETMENT (ASR) 50X112 FEET: QUANTATY TO BE FIELD-VERIFIED BEFORE STARTING WORK         | 15                 |
| 1512XX    | SALVAGE AND REINSTALL METAL BEAM GUARD RAIL AND CHAIN LINK FENCE                                                          | 15                 |
| 1512XX    | SALVAGE CRUSHED ROCK: MIX WITH ROCK SLOPE PROTECTION: WEST-SIDE ACCESS ROAD                                               | 15                 |
| 190151    | CHANNEL EXCAVATION: 2.5-FEET DEEP BELOW BOTTOM OF ASR 50 FEET WIDE X 112 FEET LONG                                        | 19                 |
| 390XXX    | PARKING LOT REPAIR                                                                                                        | 39                 |
| 4630XX    | SOIL ANCHORS                                                                                                              | 46                 |
| 490801    | FURNISH AND DRIVE SHEET PILE (8 FT DEEP X 50 FEET WIDE) PS27.5 or "heavier": May be "good used grade" Material is A572-50 | 49                 |
| 511XXX    | CONSTRUCTION JOINT BETWEEN ASR AND SHEET PILE                                                                             | 51                 |
| 721007    | ROCK SLOPE PROTECTION (1/4 TON, METHOD A) : 3-FEET DEEP X 112 FEET LONG X 50 FEET WIDE                                    | 72                 |
| 729011    | ROCK SLOPE PROTECTION FABRIC - CLASS 8 (60 FEET WIDE X 120 FEET LONG)                                                     | 72                 |
| 7505XX    | MISCELANEOUS METAL: ASR TIE DOWN CONNECTION                                                                               | 75                 |
| 7505XX    | MISCELANEOUS METAL: HYDRAULIC TRANSITION BAFFLE (ON EXISTING CONCRETE CHANNEL LINING)                                     | 75                 |
| 999990    | MOBILIZATION                                                                                                              | 1, 7, 9            |
|           |                                                                                                                           |                    |

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA



## 8 PROSECUTION AND PROGRESS

**Replace section 8-1.04F with:**

### 8-1.04F Project Start

The 1st paragraph of section 8-1.04B does not apply.

Within 3 days after receiving notice that the Contract has been approved and authorized, submit a request for authorization to start job site activities. The request must include:

1. CPM baseline schedule
2. Date you plan to start job site activities

The Department does not allow changes to the request after it is authorized.

Except for measuring controlling field dimensions and locating utilities, do not start job site activities until your WPCP or SWPPP, whichever applies, is received and authorized and the following submittals are received:

- ### 1. Notice of Materials to Be Used

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

## DIVISION II GENERAL CONSTRUCTION

## 10 GENERAL

**Replace "Reserved" in section 10-1.01 of the RSS for section 10-1 with:**

The following is a general description of the type of work for each bid item listed in the Bid Schedule, and is not intended to be all-inclusive. Comply with the contract documents for all work.

## 1. CONSTRUCTION AREA SIGNS

Comply with section 12 of the Caltrans Standard Specification and these special provisions.  
This is a lump sum item.

## 2. PREPARE WATER POLLUTION CONTROL PLAN

Comply with section 13-2 of the Caltrans Standard Specification and these special provisions.  
This is a lump sum item.

Prepare Water Pollution Control Plans includes developing and implementing the WPCP, providing a water pollution control manager, conducting water pollution control training, and monitoring, inspecting and correcting water pollution control practices.

### **3. JOB SITE MANAGEMENT**

Comply with section 13-4 of the Caltrans Standard Specification and these special provisions. This is a lump sum item.

Job Site Management includes specifications for performing job site management including spill prevention control, material management, waste management, and nonstormwater management activities. Implement effective handling, storage, usage, and disposal practices to control material pollution and manage waste and nonstormwater at the job site before they enter the storm drain systems and receiving waters. This item includes developing the contractor's water-supply and providing all water for the project; See information regarding obtaining a construction water meter, elsewhere in these contract documents.

### **4. REMOVE EXISTING ARTICULATED SLOPE REVETMENT (ASR) QUANTITY TO BE FIELD-VERIFIED BEFORE STARTING WORK**

Comply with section 15 of the Caltrans Standard Specification and these special provisions.

The ASR is defined as the “mat” on top of the subgrade materials. The ASR consists of polypropylene tendons which lace precast concrete slope revetment together. Mats are believed to be generally strips about 8-feet-wide, oriented perpendicular.

Some of the joints are laced together and grouted with concrete.

The ASR is attached to the channel wall with eye-bolts shown on the record drawings.

The ASR is penetrated with soil nails. Location of the soil nails is unknown.

Note that Concrete Fish Weirs cross the low-flow channel. These weirs are shown on the record drawings. Note that additional soil nails were placed upstream and downstream of the fish weirs.

This item includes:

- “Prospecting” for the transverse joint in the ASR across the channel upstream and downstream to determine the true stationing of the ASR to be removed and coordination with the Resident Engineer and Bengal Engineering to establish and agree on these limits.
- “Prospecting” for the eye bolts along the channel walls to avoid damaging the wall. Engineers envision that concrete breaking will be required to break apart the concrete closure pour between the ASR mats and the channel wall to avoid / minimize damaging the eyebolt in the wall. See Record Drawings.
- Effort to locate and document all the existing soil nails. Contractor shall document these locations on a sketch based on the layout plans. This sketch shall indicate if the soil nails were “intact” and appeared to be functional, or indicate if the nail had failed perhaps by pulling through the ASR or missing the head which served to hold down the ASR.
- The removal and disposal of the ASR in the limits shown on the plans and as directed by the engineer. For this contract the ASR is defined as the concrete mat, the polypropylene tendons, the concrete closure pours, and all materials associated with the construction of the ASR. The materials under this level—to the bottom of the new RSP, are considered “Channel Excavation” in this contract.



**5. SALVAGE AND REINSTALL METAL BEAM GUARD RAIL AND CHAIN LINK FENCE**

Comply with section 15 of the Caltrans Standard Specification and these special provisions. This is a lump sum item.

Contractor shall determine the limits of the Metal Beam Guard Rail and Chain Link fence they would like to salvage and reinstall for the project. This is a lump sum item.

**6. SALVAGE CRUSHED ROCK: MIX WITH ROCK SLOPE PROTECTION: WEST-SIDE ACCESS ROAD**

Comply with section 15 of the Caltrans Standard Specification and these special provisions. This is a lump sum item.

The Record Drawings show layers of crushed rock and filter fabric below the existing RSP. Contractor shall salvage this material for re-use in this project as follows:

Santa Barbara County Flood Control would like to drive across the west side of the channel as a continuation of the maintenance road which proceeds upstream from the ramp at the south end of Kellogg Ave.

To provide a smoother surface over this approximately 20-foot-wide swath of channel bottom, this western portion of the new RSP will be mixed with the crushed rock and topped with layer of crushed rock to form a travel surface. All or part of the remainder of the crush rock may be mixed/ blended with the rest of the imported RSP as directed by the Engineer, to minimize export of the crushed rock.

Contractor shall implement measures to keep this material reasonably free of the native subgrade material during excavation, stockpiling, mixing and placement.

Note that the subgrade may be wet. In such case, under the direction of the Engineer, the channel excavation could be made deeper (with an increase the quantity for payment) and the crushed rock used to stabilize the subgrade.

Left-over crushed rock shall be kept on hand until the Engineer releases it for export. In the event there is any material left-over it shall become the property of the Contractor.

**7. CHANNEL EXCAVATION: 2.5-FEET DEEP BELOW BOTTOM OF ASR X 50 FEET WIDE X 112 FEET LONG**

Comply with section 19 of the Caltrans Standard Specification and these special provisions.

According to the Record drawings, the material excavated should include 2 layers of filter / rock slope protection fabric, and crushed rock of various gradations.

Note: Contactor shall salvage the crushed rock mix with the new Rock Slope Protection as described in SALVAGE CRUSHED ROCK: MIX WITH ROCK SLOPE PROTECTION: BUILD ACCESS ROAD.

Condition (wetness) of the subgrade was unknown at the time these plans and specifications were prepared.

**8. PARKING LOT REPAIR**

Comply with section 39 of the Caltrans Standard Specification and these special provisions. This is a lump sum item.

The City is arranging access across private property to the work area. At the time the plans were prepared, these arrangements for construction access were not finalized. The Engineer believes that access will be provided from Kellogg Ave. to the "west wall", and from the Flood

Control Access Ramp about 3600 feet south on Kellogg Ave. See the preliminary exhibits which accompany the plans for more information.

Note that the Contractor will travel across privately-owned paved parking lots and driveways. The contractor shall review the worksite before mobilizing, take clear photographs (with dates and locations labeled) and a narrated video of the pavement before moving any equipment on site.

After all work is completed, the Contractor shall coordinate with the City's Resident Engineer to review the condition of the pavements and other components of the private properties and develop a plan and scope of work to repair anything which may have been affected by the construction

After all repair / mitigation work is complete, contractor shall take another series of photographs and narrated video to document the condition of the properties after the project is finished and all equipment is off site.

#### **9. SOIL ANCHORS**

Comply with section 46 of the Caltrans Standard Specification and these special provisions.

#### **10. FURNISH AND DRIVE SHEET PILE (8 FT DEEP X 50 FEET WIDE) PS27.5 or "heavier": May be "good used grade" Material is A572-50**

Comply with section 49 of the Caltrans Standard Specification and these special provisions.

Piling may be 'Good used material' as shown on the plans. This sheet pile forms both a cut-off wall at the downstream side of the imported RSP and a part of the CONSTRUCTION JOINT BETWEEN ASR AND SHEET PILE.

This item includes furnishing and installing the sheet pile, cutting the top of the driven sheets to match the cross-section of the channel, grinding the top of the sheet pile to remove sharp edges or areas which could snag debris.

In order to provide a smoother finished top edge, consideration shall be given to installing an inverted steel L-angle or C-channel on top of the sheet pile.

Because of the limited time available to the Engineer at the time these plans were developed, this concept shall be discussed at the start of the work. Fabrication and installation of the top edge is not included in the bid item and will be paid as extra work or Force Account as determined by the Resident Engineer.

#### **11. CONSTRUCTION JOINT BETWEEN ASR AND SHEET PILE**

Comply with section 51 of the Caltrans Standard Specification and these special provisions. This is a lump sum item.

This item includes the materials, fabrication, and installation of the construction joint between the sheet pile and the downstream ASR, complete in place. The concept is shown on the Construction Details.

#### **12. ROCK SLOPE PROTECTION (1/4 TON, METHOD A) : 3-FEET DEEP X 112 FEET LONG X 50 FEET WIDE**

Comply with section 72 of the Caltrans Standard Specification and these special provisions.

Note that the west side of this material will be mixed with crushed rock to form an access road.

#### **13. ROCK SLOPE PROTECTION FABRIC - CLASS 8 (60 FEET WIDE X 120 FEET LONG)**

Comply with section 72 of the Caltrans Standard Specification and these special provisions.

Note that the RSP fabric wraps up the sides along the walls (3 feet each side) and at the upstream and downstream ends (another 3 feet). Quantity allows for these vertical 'sides'; overlaps in the field are expected and will not be 'double-counted'.

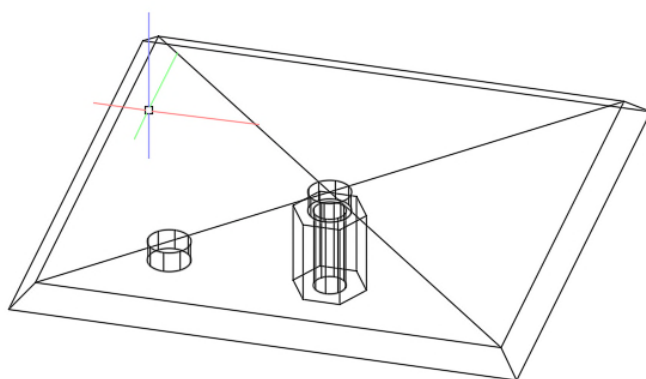
#### 14. MISCELANEOUS METAL: ASR TIE DOWN CONNECTION

Comply with section 75 of the Caltrans Standard Specification and these special provisions.

This item is defined as the fabrication and installation "tops" of the Soil Anchors, to hold down the existing ASR.

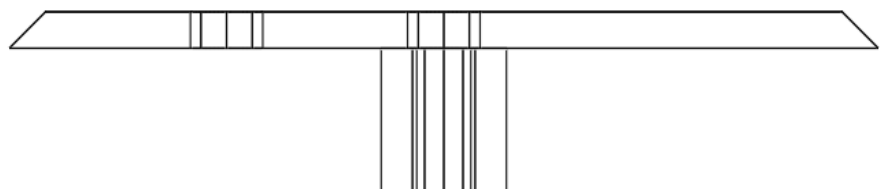
This is the plate which will be threaded on top of the soil anchor to hold down the ASR in the event of uplift.

- Plate is 1/2 Inch steel: A572 Gr 60:
- Parts are galvanized
- Plate is 12x12 inches on the bottom.
- Edges are beveled 45-degrees to ease travel
- Drill extra hole to help spin plate on soil anchor: this hole is 1-inch diameter, drilled halfway center anchor and corner
- Soil Anchor nut is welded all around to bottom of plate: weld configuration to accept load mentioned in GROUND ANCHORS AND SOIL NAILS
- Use full-height anchor nut: this is about 2-inches tall—use the full-height nut seen elsewhere in the channel. Contractor to obtain a sample from the channel
- Cut extra soil anchor length flush with the top of the plate
- After installation, braze or tack weld nut to top of anchor to keep the plate from being removed by vandals or lost somehow.



Isometric view

Side view





**Photograph of full-height nut from a location elsewhere on the channel.**

This is the type of nut to be used on the bottom of the plates to be fabricated in this contract. Do not use the “short nuts” seen on some of the existing plates in this contract.

15. MISCELLANEOUS METAL: HYDRAULIC TRANSITION BAFFLE (ON EXISTING CONCRETE CHANNEL LINING)

Comply with section 75 of the Caltrans Standard Specification and these special provisions.

## 16. MOBILIZATION

Comply with the Caltrans Standard Specification and these special provisions. This is a lump sum item.

[illegible]

## 13 WATER POLLUTION CONTROL

## 13-1 GENERAL

### 13-3.01A Summary

**Replace the 4th paragraph in section 13-3.01A with**

Discharges of stormwater from the project must comply with the permit issued by the Central Coast RWQCB for *National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000002, Permit No. (Order No. 2009-0009-DWQ)*. The Central Coast RWQCB permit governs stormwater and non-stormwater discharges resulting from construction activities in the project area. The Central Coast RWQCB permit may be viewed at Central Coast RWQCB office located at 895 Aerovista Place, Suite 101 San Luis Obispo, CA 93401.

**Replace 1st paragraph of section 13-6.03C with:**

Provide temporary drainage inlet protection around drainage inlets as changing conditions require. Drainage inlet protection must be an appropriate type for conditions around the drainage inlet.

### 13-1.04 PAYMENT

**Replace section 13-1.04 with:**

Full compensation for work specified in section 13 and applicable engineering standards is included in the payment for other items unless a bid item of work is shown on the bid item list.

[illegible]

## DIVISION VI STRUCTURES

## 46 GROUND ANCHORS AND SOIL NAILS

**Add to section 46-3:**

Soil Anchors shall meet the following criteria:

- 1) Cellular concrete mattresses must be anchored at the top and at the exposed sides of the ends of the revetment system by fastening the exposed revetment cables to the anchors driven into the anchor trench as shown on the plans.
- 2) Care shall be given to protect the revetment cables

- 3) Soil Anchor System must be Manta Ray Type MR-4 or approved equal.
- 4) The Anchor system must have a steel plate at the top for holding down the concrete mattresses. See construction details for more information. This item is paid separately as MISCELANEOUS METAL: ASR TIE DOWN CONNECTION.
- 5) Minimum Ultimate Tensile strength of the anchor and its components (including the anchor and attachment hardware) shall be 16000 pounds (71 kN).
- 6) All components of the earth anchor must be hot dip galvanized per ASTM A-123 / ASTM A-153.
- 7) Anchor rods must have a diameter of .75 inches (19mm).
- 8) Anchors must be installed at the locations and angles shown on the project plans.
- 9) All anchors must meet the minimum embedment length of 15-feet (along the axis of the anchor rod) specified on the project plans after the proof test as specified below. It shall be the responsibility of the installer to drive the anchors to a sufficient depth prior to proof testing such that the anchors will meet this minimum embedment length after the proof test.
- 10) All anchors must be proof tested along the axis of the anchor rod to the minimum proof test specified on the project plans. The proof test load shall be held for a period of one minute during which time the movement of the anchor shall not exceed ½ inch (12mm).
- 11) The installer must keep a record of installation and test for each anchor that records the anchor specifics (anchor and rod model, installation angle), proof test results, final embedment length.
- 12) The proof testing device shall have been calibrated or “Load Verified” within the past 1 year. It shall be the responsibility of the installer to supply the Calibration or Load Verification Certificate.
- 13) The installer may substitute a different size anchor head as is appropriate for soil conditions provided that all of the above criteria are met.
- 14) Soil Anchors shown on the plans are in addition to mattresses manufacturer/suppliers recommendations.

**Replace 46-3.04 PAYMENT:**

Soil anchors are measured as each.

Verification and proof test soil anchors are paid for as soil anchors.

~~~~~

SECTION G

FEDERAL REQUIREMENTS

GENERAL.— The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, "Form FHWA 1273, are included in this Section. Whenever in said required contract provisions references are made to "SHA contracting officer," "SHA resident engineer," or "authorized representative of the SHA," such references shall be construed to mean "Engineer" as defined in the General Provisions.

PERFORMANCE OF PREVIOUS CONTRACT.— In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the required contract provisions, the Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION.— The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary projects.

Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28, USC, Sec. 1746, is included in the proposal.

1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Under 49 CFR 26.13(b):

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a goal for DBEs.

Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

Meet the DBE goal shown elsewhere in these special provisions or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the DBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to: http://www.dot.ca.gov/hq/bep/find_certified.htm.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1) through (4) and (6).

a. DBE Commitment Submittal

Submit the Exhibit 15-G *Local Agency Bidder DBE Commitment (Construction Contracts)* form, included in the Bid book. If the form is not submitted with the bid, remove the form from the Bid book before submitting your bid.

If the DBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the DBE Commitment form to the Agency. DBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the DBE Commitment form unless the Agency requests it. If the Agency requests you to submit a DBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

If you do not submit the DBE Commitment form within the specified time, the Agency will find your bid nonresponsive.

b. Good Faith Efforts Submittal

If you have not met the DBE goal, complete and submit the DBE Information - Good Faith Efforts, Exhibit 15-H, form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the DBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and

date assistance was provided. Provide copies of supporting documents, as appropriate.

8. Any additional data to support demonstration of good faith efforts.

The Agency may consider DBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made good faith efforts to meet the DBE goal.

c. Exhibit 15-G - Local Agency Bidder DBE Information (Construction Contracts)

Complete and sign Exhibit 15-G *Local Agency Bidder DBE Commitment (Construction Contracts)* included in the contract documents regardless of whether DBE participation is reported.

Provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the Agency encourages you to submit a copy of the joint venture agreement.)

d. Subcontractor and Disadvantaged Business Enterprise Records

Use each DBE subcontractor as listed on Exhibit 12-B *Bidder's List of Subcontractors (DBE and Non-DBE)* and Exhibit 15-G *Local Agency Bidder DBE Commitment (Construction Contracts)* form unless you receive authorization for a substitution.

The Agency requests the Contractor to:

1. Notify the Engineer of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subcontractor
 - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business

If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th of each month, submit a Monthly DBE Trucking Verification form.

If a DBE is decertified before completing its work, the DBE must notify you in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify you in writing of the certification date. Submit the notifications. On work completion, complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form. Submit the form within 30 days of contract acceptance.

Upon work completion, complete Exhibit 17-F *Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors*. Submit it within 90 days of contract acceptance. The Agency will withhold \$10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

e. Performance of Disadvantaged Business Enterprises

DBEs must perform work or supply materials as listed in the Exhibit 15-G *Local Agency Bidder DBE Commitment (Construction Contracts)* form, included in the Bid.

Do not terminate or substitute a listed DBE for convenience and perform the work with your own forces or obtain materials from other sources without authorization from the Agency.

The Agency authorizes a request to use other forces or sources of materials if it shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. Agency determines other documented good cause.

Notify the original DBE of your intent to use other forces or material sources and provide the reasons. Provide the DBE with 5 days to respond to your notice and advise you and the Agency of the reasons why the use of other forces or sources of materials should not occur. Your request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph
2. Notices from you to the DBE regarding the request
3. Notices from the DBEs to you regarding the request

If a listed DBE is terminated or substituted, you must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution.

Unless the Agency authorizes (1) a request to use other forces or sources of materials or (2) a good faith effort for a substitution of a terminated DBE, the Agency does not pay for work listed on the Exhibit 15-G *Local Agency Bidder DBE Commitment (Construction Contracts)* form unless it is performed or supplied by the listed DBE or an authorized substitute.

2. BID RIGGING The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is

(800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway

construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

3. CHANGED CONDITIONS *Differing Site Conditions*

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the Local Agency, at their option.)

b. *Suspensions of Work Ordered by the Engineer*

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

c. Significant Changes in the Character of Work

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term “significant change” shall be construed to apply only to the following circumstances:
 - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

4. BUY AMERICA

Furnish steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

5. QUALITY ASSURANCE

The Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract.

You may examine the records and reports of tests the Agency performs if they are available at the job site.

Schedule work to allow time for QAP.

6. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The City shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

7. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS

[The following 10 pages must be physically inserted into the contract without modification.]

Schedule B—Information for Determining Joint Venture Eligibility

(This form need not be filled in if all joint venture firms are DBE owned.)

1. Name of joint venture _____
2. Address of joint venture _____
3. Phone number of joint venture _____
4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.) _____
 - a. Describe the role of the DBE firm in the joint venture. _____
 - b. Describe very briefly the experience and business qualifications of each non-DBE joint venturer: _____
5. Nature of the joint venture's business _____
6. Provide a copy of the joint venture agreement.
7. What is the claimed percentage of DBE ownership? _____
8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.).
 - a. Profit and loss sharing.
 - b. Capital contributions, including equipment.
 - c. Other applicable ownership interests.
9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:
 - a. Financial decisions _____
 - b. Management decisions, such as:
 1. Estimating _____
 2. Marketing and sales _____
 3. Hiring and firing of management personnel _____
 4. Purchasing of major items or supplies _____
 - c. Supervision of field operations _____

Note.—If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

Affidavit

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

_____ Name of Firm	_____ Name of Firm
_____ Signature	_____ Signature
_____ Name	_____ Name
_____ Title	_____ Title
_____ Date	_____ Date

Date _____

State of _____

County of _____

On this ____ day of _____, 20__, before me appeared (Name) _____

_____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) _____

_____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission expires _____

[Seal]

Date _____

State of _____

County of _____

On this ____ day of _____, 20__, before me appeared (Name) _____

to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) _____

to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission expires _____

[Seal]

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

This Page Intentionally Left Blank

EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

1. Local Agency Contract Number		2. Federal-Aid Project Number		3. Local Agency		4. Contract Completion Date	
5. Contractor/Consultant		6. Business Address		7. Final Contract Amount			
8. Contract Item Number	9. Description of Work, Service, or Materials Supplied	10. Company Name and Business Address	11. DBE Certification Number	12. Contract Payments		13. Date Work Completed	14. Date of Final Payment
				Non-DBE	DBE		
15. ORIGINAL DBE COMMITMENT AMOUNT \$ _____				16. TOTAL			
List all first-tier subcontractors/subconsultants and DBEs regardless of tier whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at the time of award, provide comments on an additional page. List actual amount paid to each entity. If no subcontractors/subconsultants were used on the contract, indicate on the form.							
I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT							
17. Contractor/Consultant Representative's Signature		18. Contractor/Consultant Representative's Name		19. Phone		20. Date	
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED							
21. Local Agency Representative's Signature		22. Local Agency Representative's Name		23. Phone		24. Date	

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

1. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
2. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
3. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
4. **Contract Completion Date** - Enter the date the contract was completed.
5. **Contractor/Consultant** - Enter the contractor/consultant's firm name.
6. **Business Address** - Enter the contractor/consultant's business address.
7. **Final Contract Amount** - Enter the total final amount for the contract.
8. **Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
9. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
10. **Company Name and Business Address** - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.
11. **DBE Certification Number** - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.
12. **Contract Payments** - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.
13. **Date Work Completed** - Enter the date the subcontractor/subconsultant's item work was completed.
14. **Date of Final Payment** - Enter the date when the prime contractor/consultant made the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.
15. **Original DBE Commitment Amount** - Enter the "Total Claimed DBE Participation Dollars" from Exhibits 15-G or 10-O2 for the contract.
16. **Total** - Enter the sum of the "Contract Payments" Non-DBE and DBE columns.
17. **Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
18. **Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
19. **Phone** - Enter the area code and telephone number of the person signing the form.
20. **Date** - Enter the date the form is signed by the contractor's preparer.
21. **Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
22. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
23. **Phone** - Enter the area code and telephone number of the person signing the form.
24. **Date** - Enter the date the form is signed by the Local Agency Representative.

EXHIBIT 17-O DISADVANTAGED BUSINESS ENTERPRISES (DBE) CERTIFICATION STATUS CHANGE

[illegible]

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**INSTRUCTIONS –DISADVANTAGED BUSINESS ENTERPRISES (DBE)
CERTIFICATION STATUS CHANGE**

1. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
2. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
3. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
4. **Contract Completion Date** - Enter the date the contract was completed.
5. **Contractor/Consultant** - Enter the contractor/consultant's firm name.
6. **Business Address** - Enter the contractor/consultant's business address.
7. **Final Contract Amount** - Enter the total final amount for the contract.
8. **Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
9. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors/consultants.
10. **DBE Certification Number** - Enter the DBE's Certification Identification Number.
11. **Amount Paid While Certified** - Enter the actual dollar value of the work performed by those subcontractors/subconsultants during the time period they are certified as a DBE.
12. **Certification/Decertification Date (Letter Attached)** - Enter either the date of the Decertification Letter sent out by the Office of Business and Economic Opportunity (OBE) or the date of the Certification Certificate mailed out by OBE.
13. **Comments** - If needed, provide any additional information in this section regarding any of the above certification status changes.
14. **Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
15. **Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
16. **Phone** - Enter the area code and telephone number of the person signing the form.
17. **Date** - Enter the date the form is signed by the contractor's preparer.
18. **Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
19. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
20. **Phone** - Enter the area code and telephone number of the person signing the form.
21. **Date** - Enter the date the form is signed by the Local Agency Representative.

APPENDIX 1

SAMPLE NOTIFICATIONS

This Page Intentionally Left Blank

City of Goleta
Notice to Area
Businesses, Residents, & Schools

The City is pleased to inform you that during the next couple of months, Contractor Name, in conjunction with the City of Goleta, will be performing various Enter Project information s in your neighborhood as part of the City's San Jose Creek Channel Emergency Repair Project – PROJECT NO. FEMA 4308.

We apologize for any inconvenience this may cause and ask for your patience and cooperation so that we may complete this work as soon as possible.

The work will generally be performed between the hours of 7:30 a.m. and 5:00 p.m. However, there are work hour restrictions in some instances (i.e., vicinity of schools). Local access will be maintained during most of the work. However, parking restrictions will be necessary and will be posted a minimum of 72-hours in advance of the work.

Some or all of the following repair work will be performed in your area:

1. Remove and replace...
2. Install...

If you have any questions or require additional information please contact the following:

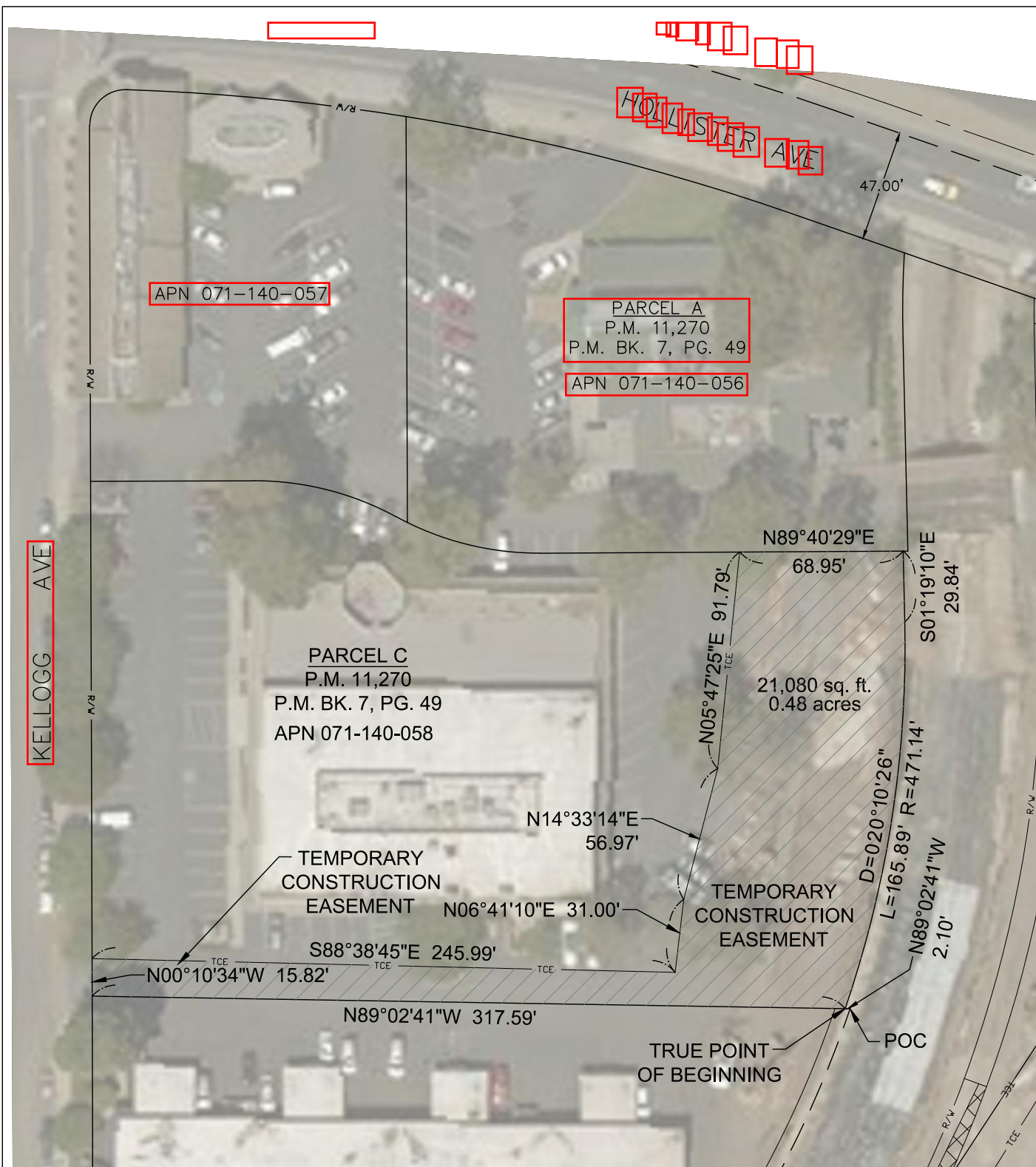
Contractor Contact: _____
Contractor Company Name: _____
Contractor Local (805) phone number: _____

ENGLISH AND SPANISH TRANSLATIONS

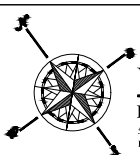
This Page Intentionally Left Blank

APPENDIX 2

Temporary Construction Easements



TEMPORARY
CONSTRUCTION EASEMENT
OF A PORTION OF
APN 071-140-058

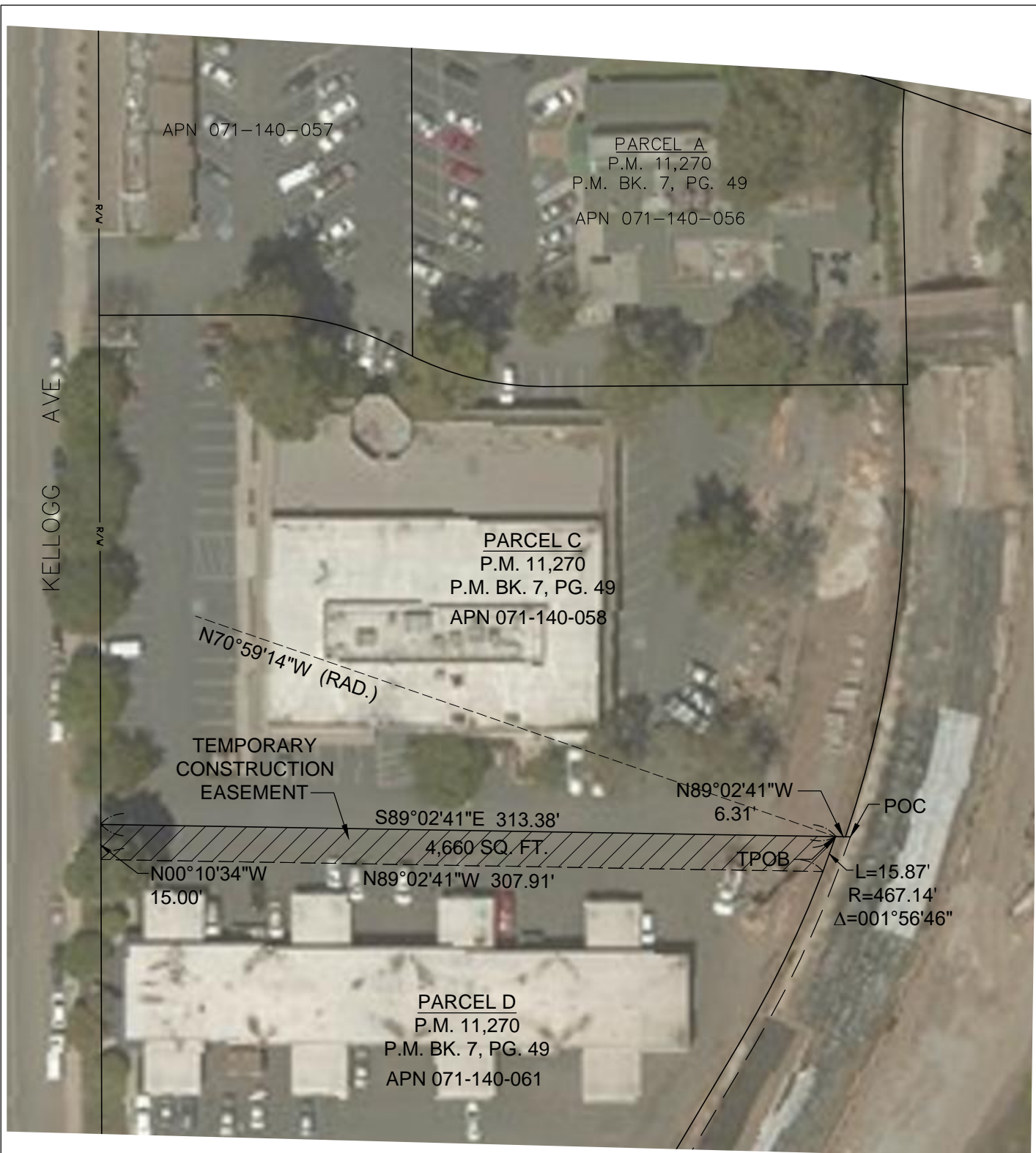


W.C. 17-038

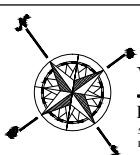
WATERS CARDENAS
LAND SURVEYING, LLP
5553 HOLLISTER AVENUE, STE. 7, GOLETA, CA 93117
Phone: (805) 967-4416 jcardenas@wcsurveying.com bwaters@wcsurveying.com



CITY OF GOLETA
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA
1"=60'



TEMPORARY
CONSTRUCTION EASEMENT
OF A PORTION OF
APN 071-140-061



W.C. 17-038

WATERS CARDENAS
LAND SURVEYING, LLP
5553 HOLLISTER AVENUE, STE. 7, GOLETA, CA 93117
Phone: (805) 967-4416 jcardenas@wvsurveying.com bwaters@wvsurveying.com



CITY OF GOLETA
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA
1"=60'

This Page Intentionally Left Blank

APPENDIX 3

Selected Plan Sheets from Previous San Jose Creek Channel Capacity Improvement and Fish Passage Project (completed in 2015)

This Page Intentionally Left Blank