



**TOWN OF MORAGA
PUBLIC WORKS DEPARTMENT**

**SPECIFICATIONS AND CONTRACT DOCUMENTS
FOR THE CONSTRUCTION OF**

Commons Park Picnic Area Renovation Project

TOWN CIP NO. 19-302

**BID OPENING:
2:00 P.M. on**

Tuesday, March 7, 2023

**TOWN OF MORAGA
329 RHEEM BOULEVARD
MORAGA, CA 94556**

TOWN OF MORAGA
PUBLIC WORKS DEPARTMENT

Commons Park Picnic Area Renovation Project

TOWN CIP NO. 19-302

APPROVED FOR ADVERTISING AND CONSTRUCTION:

Shawn Knapp

2-10-2023

SHAWN KNAPP, P.E.
PUBLIC WORKS DIRECTOR/TOWN ENGINEER

DATE



CASEY CASE
PROJECT ARCHITECT

DATE:

TABLE OF CONTENTS

Moraga Commons Park Picnic Area Renovation (CIP 19-302)

1. Notice Inviting Bids
2. Instructions and Information for Bidders
3. Bid Form & Schedule
4. Site Visit Affidavit
5. Subcontractor List
6. Noncollusion Affidavit
7. Bidder's Questionnaire
8. Liability and Insurance Requirements
9. Insurance Acknowledgement
10. Workers Compensation Certificate
11. DIR Compliance Affidavit
12. Bid Bond
13. Contract
14. Payment Bond
15. Performance Bond
16. General Conditions
17. Supplemental Conditions
18. Release of Claims Agreement
19. Guaranty
20. Substitution Request Form

Technical Specifications

- 01-20-00 Measurement and Payment
- 01-56-39 Landscape Preservation
- 12-93-00 Site Furniture and Accessories
- 31-10-00 Clearing, Grubbing and Miscellaneous Demolition
- 32-13 16 Decorative Concrete
- 32-91-19 Earthwork & Grading

Appendix

- A - Project Plans or Drawings

NOTICE INVITING BIDS
Commons Park Picnic Area Renovation (CIP 19-302)
(Architect's Estimate: \$325,000)

1. The Town of Moraga ("Owner") will accept sealed bids for its **Commons Park Picnic Area Renovation** ("Project") by or before **2:00 PM on Tuesday, March 7, 2023** ("Bid Time") at the Town Offices, 2nd Floor, Public Works Department, located at 329 Rheem Boulevard, Moraga, California, 94556 at which time the bids will be publicly opened and read aloud. Owner reserves the right to reject any and all bids, to re-bid, or to waive any non-substantive irregularities or defects in the bids.

BIDDERS MUST SUBMIT BIDS ON A HARD COPY OF THE BID PROPOSAL FORMS PROVIDED IN THE CONTRACT DOCUMENTS. All bids and required bid documents submitted must be bound into the hard copy bid package as described in the instructions to bidders. Each bid must be signed by or on behalf of the bidder and must be enclosed in a SEALED ENVELOPE or BOX with the following information on the outside:

- a. Name and address of bidder
- b. Project for which the bid is being submitted
- c. Date and time of bid opening

The envelope or box shall be addressed to the Town of Moraga, City Clerk, 329 Rheem Blvd, Moraga, California 94556.

2. Pursuant to California Public Contract Code Section 3300, this Project requires a valid California contractor's license for the following classification(s): A General Engineering Contractor, C-8 Concrete Contractor, or C-27 Landscaping Contractor. Failure to possess the specified license(s) at the time the bid is submitted shall render the bid non-responsive.
3. The base Scope of Work ("Work") includes but is not limited to: Furnish all labor, materials, equipment, and performing all work necessary and incidental to the removal and installation of Portland Cement Concrete pavements with or without colorant, concrete surface treatments such as stamping or staining, minor grading and earthwork, minor placement and compaction of aggregate base, surveying, and grade-setting, and all appurtenant work thereto required by the Contract Documents, inclusive of the plans and specifications, and the applicable Caltrans Standard Specifications and the Special Provisions, Laws, rules, and regulation of the State of California and the Owner, and as directed by the Owner.
5. Project shall have Substantial Completion of items within 35 working days and Final Completion within 45 working days from the date specified in the Notice to

Proceed. Time for commencement and completion of the work is important. Time is of the essence in completing contract work in the specified number of days.

6. The plans, specifications, and contract documents for the Project ("Contract Documents") may be obtained from the Public Works Department of the Town of Moraga at 329 Rheem Boulevard, Moraga, CA (925) 888-7026. Contract Documents will be available on or after February 10, 2023. Contractors may obtain a copy of the Contract Documents for a non-refundable payment of Fifty-Five Dollars (\$55.00) per set in the form of a cashier's check, money order, or certified check payable to the Town of Moraga. An additional non-refundable charge of Fifty Dollars (\$50.00) will be required for contract documents that are mailed to the Contractor. Contract documents may also be obtained through the Town website by email at no cost. Please contact Public Works Administration at publicworks@moraga.ca.us for information regarding electronic contract documents. Owner does not guarantee the arrival of Contract Documents in time for bidding.

Additionally, the Contract Documents may be viewed on or after Friday, February 10, 2023, and on an open plan room policy at the following Contractor/Builder exchanges:

Construction Bidboard, Inc.
11622 El Camino Real, #100
San Diego, CA 92130
Phone: 858-643-9050
Fax: 858-777-6835
Email: support@ebidboard.com
Website: www.construction.com

Marin Builders Association
660 Las Gallinas Avenue
San Rafael, CA 94903
Phone: 415-462-1220
Fax: 415-462-1225
Email: MBA@marinbuilders.com
Website: www.marinbuilders.com

Dodge Data & Analytics
830 Third Avenue, 6th Floor
New York, NY 10022
Phone: 877-784-9556
Fax: 510-636-1858
Email: support@construction.com
Website: www.construction.com

Placer County Contractors
Association & Builders Exchange
10656 Industrial Avenue, Suite 160
Roseville, CA 95678
Phone: 916-771-7229
Fax: 919-771-0556
Website: www.pccamembers.com

Bay Area Builders Exchange
3055 Alvarado Street
San Leandro, CA 94577
Phone: 510-483-8880
Email: info@bayareabx.com
Website: www.bayareabx.com

Bay Area Builders Exchange
2440 Stanwell Drive, Suite B
Concord, CA 94520
Phone: 925-685-8630
Website: www.bayareabx.com

Peninsula Builders Exchange
735 Industrial Road
San Carlos, CA 94070
Phone: 650-591-4486
Website:
www.safetystar.org/safetystar

Builders' Exchange of Stockton
7500 West Lane
Stockton, CA 95210
Phone: 209-478-1000
Email: crobinson@besonline.com
Website: www.besonline.com

It is the responsibility of the Bidders to obtain from the Town's website or in person at the Engineering Division office any and all changes to the plans, specifications, proposal forms, addenda, other project notifications, and documents during the bid process. A bid is invalid if it has not been deposited at the designated location prior to the time and date for receipt of bids indicated in the Notice Inviting Bids or prior to any addendum extension thereof.

7. Each bid must be submitted using the Bid Proposal Form provided with the Contract Documents. In accordance with California Public Contract Code Section 20170, each Bid Proposal must be accompanied by a bid security of ten percent (10%) of the Base Bid amount, in the form of a cashier's or certified check made payable to Owner, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security shall guarantee that upon award of the bid, the bidder shall execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within seven (7) days following notice of award of the Contract.
8. Bidders are solely responsible for the cost of preparing their Bids.
9. Owner specifically reserves the right, in its sole discretion, to reject any or all Bids, re-bid, or waive inconsequential defects in bidding not involving time, price, or quality of the work. Owner may reject any and all Bids and waive any minor irregularities in the Bids.
10. Pursuant to California Labor Code Section 1771, this Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. As determined by the Director of the

California Department of Industrial Relations, these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work shall be at least time and one-half.

11. Performance and payment bonds in an amount of 100% of the Contract price shall be required of the successful bidder prior to execution of a contract. A warranty bond is required upon completion of the project. All bonds submitted shall be from admitted sureties.
12. The substitution of appropriate securities in lieu of retention amounts from progress payments is permitted in accordance with Public Contract Code Section 22300.
13. A **mandatory bidders' conference** will be held on **Tuesday, February 21, 2023, at 10:00 AM**, at the following location: Moraga Commons Park, Moraga, CA, for the purpose of acquainting all prospective bidders with the bid documents and the Worksite. The bidders' conference is **mandatory**.
14. Pursuant to Public Contract Code Section 4104, each Bid Proposal must include the name, location of the place of business, California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who shall perform work or service or fabricate or install work for the prime Contractor in excess of one-half of one percent (½ of 1%) of the bid price, using the Subcontractor List form included with the Contract Documents.
15. No bid may be withdrawn for a period of sixty (60) days after the date set for the opening for bids except as provided pursuant to Public Contract Code Sections 5100 et seq.
16. Additional information is provided in the Instructions and Information for Bidders, which all bidders should carefully review prior to submitting a Bid Proposal.
17. Questions regarding the contract documents shall be submitted in writing to:

Bret Swain, P.E.
Senior Civil Engineer
Town of Moraga
Email all questions to both of the following addresses:
publicworks@moraga.ca.us
bswain@moraga.ca.us

All **questions** shall be submitted by email to both by **March 1 , 2023, at 5:00 PM**. Questions submitted shall include "Questions" and the full project name as indicated at the top of the notice inviting bids in the subject line. The Town will post all bid-related questions and answers and any addenda on its website at:

<https://www.moraga.ca.us/Bids.aspx>

18. 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 works pursuant to Section 17.25.5 at the time the Contract is awarded. Any bids submitted without proof that bidder and any listed subcontractor(s) are currently registered and qualified to perform public work, pursuant to Labor Code Section 1725.5, shall not be accepted by Owner.
19. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (California Labor Code Section 1771.4).
20. The successful bidder must ensure that employees and applicants for employment are not discriminated against on the basis of age, color, race, national origin, ancestry, religion, sex, sexual preference, marital status, and comply with the Americans with Disabilities Act.

TOWN OF MORAGA



2/07/2023

SHAWN KNAPP, P.E.
PUBLIC WORKS DIRECTOR/TOWN ENGINEER

DATED

Publication Dates: 1) 2/10/2023 2) 2/17/2023

INSTRUCTIONS AND INFORMATION FOR BIDDERS

Commons Park Picnic Area Renovation (CIP 19-302)

Each Bid Proposal submitted to the Town of Moraga (“Owner”) for the Commons Park Picnic Area Renovation (“Project”) must be submitted in accordance with the following instructions and requirements:

1. **Bid Submission.** Each bid (“Bid Proposal”) must be sealed and submitted to the Owner by or before the date and time and at the location set forth in the Notice Inviting Bids, or as amended by subsequent addendum. Faxed Bid Proposals will not be accepted. Late submissions will be returned unopened.
2. **Examination of Contract Documents and Project Site.** Each bidder is solely responsible for thorough review of the Contract Documents (as defined in the General Conditions) and the examination of Project site prior to submitting a Bid Proposal. However, bidders should not enter onto Owner’s property or the Project site without prior authorization from Owner. Bidders are responsible for reporting any errors or omissions in the Contract Documents to Owner prior to submitting a Bid Proposal, subject to the limitations of Public Contract Code Section 1104.
3. **Requests for Information.** Bid inquiries regarding the Project must be submitted in writing or by email to Public Works Administration (publicworks@moraga.ca.us and bswain@moraga.ca.us). All bid inquiries must be submitted at least ten days prior to the bid opening. The subject line for any such bid inquiry shall include a reference to Moraga Commons Park Picnic Area Renovation, Bid Inquiry – Contract No. CIP 19-302 or shall not be deemed valid.
4. **Questions and Answers.** Prospective bidders may have questions regarding the bid process, the contract documents, or other aspects of the project. Questions may be submitted by email in writing in the manner, and within the time period, provided in the Notice Inviting Bids. The Town will attempt to respond in a timely manner. Addenda will be issued in response to questions that initiate the need for a substantive change to the Contract Documents. A Q&A will be issued where minor clarifications are deemed appropriate by the Town to address some questions, which do not initiate the need for a substantive change to the Contract Documents.
5. **Addenda.** From time to time addenda may be issued that make a substantive change to the Contract Documents. Any addenda issued prior to Bid Time shall constitute part of the Contract Documents. Owner reserves the right to issue addenda prior to Bid Time, subject to the limitations of Public Contract Code Section 4104.5.
6. **Brand Designations and “Or Equal” Substitutions.** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an “equal” item must be submitted with the written request for substitution. A request for substitution must be

submitted within the time period provided in the specifications. If no time period is specified, the substitution request may be submitted any time within thirty-five (35) days after the date of award of the contract. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name pursuant to Public Contract Code Section 3400(c).

7. **Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders and may also submit a Bid Proposal as a prime contractor.
8. **Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed in ink using the Bid Proposal form included in the Contract Documents. The Bid Proposal form should be fully completed without interlineations, alterations, or erasures. All information provided on the Bid Documents must be clearly legible. A Bid Proposal submitted with terms such as "negotiable," "will negotiate," or similar, will be considered non-responsive. Each Bid Proposal must be accompanied by the completed bid schedule, bid security, and by all other Required Bid Documents set forth below using the forms included in the Contract Documents.
8. **Bidder Information.** Each Bid Proposal must be signed by the bidder's authorized representative. Bid Proposals submitted by partnerships must be signed in the partnership name by a general partner with authority to bind the partnership. Bid Proposals submitted by corporations must be signed with the legal name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation.
9. **Bid Security.** Each Bid Proposal must be accompanied by bid security of ten percent (10%) of the Total Bid amount, in the form of a cashier's check, a certified check, or a bid bond, using the form included in the Contract Documents, executed by a surety licensed to do business in the State of California, made payable to Owner. The bid security shall guarantee that upon award of the bid, the bidder shall execute and submit the Contract, on the form included in the Contract Documents, shall submit payment and performance bonds for one hundred percent (100%) of the maximum Contract Price, and shall submit the insurance certificates and endorsements as required by the Contract Documents within seven (7) days following notice of award of the contract.
10. **Withdrawal of Bid Proposals.** A Bid Proposal may not be withdrawn for a period of sixty (60) days after the bid opening, except as authorized by Owner pursuant to Public Contract Code Section 5103.
11. **Bid Protest.** Any bid protest must be in writing and received by the Owner at the Public Works Department, 329 Rheem Boulevard, Moraga, CA 94556 before 5:00 p.m. no later than five (5) working days following bid opening (the "Bid Protest

Deadline") and must comply with the following requirements:

- A. Only a responsible bidder who has actually submitted a responsive Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder but must timely pursue its own protest.
- B. The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address and telephone number of the person representing the protesting bidder if different from the protesting bidder.
- C. A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- D. The protested bidder may submit a written response to the protest, provided the response is received by Owner before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address and telephone number of the person representing the protested bidder if different from the protested bidder.
- E. A copy of the response and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest
- F. The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. The bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

12. **Rejection of Bids and Award of Contract.** Owner reserves the right, acting in its sole discretion, to waive nonsubstantive bid irregularities, the right to accept or reject any and all bids, to rebid or to abandon the work entirely. The Contract will be awarded, if at all, within fifty three (53) calendar days after opening of Bids, to the responsible bidder submitting the lowest responsive bid, as set forth in the Bid Proposal.

13. **Bonds.** In accordance with California Public Contract Code Section 20170, each

Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a cashier's or certified check made payable to Owner, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security shall guarantee that upon award of the bid, the bidder shall execute the contract and submit payment bonds, performance bonds, insurance certificates, and all other required documents as required by the Contract Documents within seven (7) days following notice of award of the Contract.

14. **Evidence of Responsibility.** Within twenty-four (24) hours following a request by Owner, a bidder shall submit to the Owner satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work being required by the Owner, the bidder's organization available for the performance of the contract and any other required evidence of the bidder's qualifications to perform the proposed contract. The Owner may consider such evidence before making its decision awarding the proposed Contract.
15. **License(s) and Contractor Registration.** The successful bidder and its subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the work, as indicated in the Notice Inviting Bids, and must be registered with the Department of Industrial Relations. 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 works pursuant to Section 17.25.5 at the time the contract is awarded. Any bids submitted without proof that bidder and any listed subcontractor(s) are currently registered and qualified to perform public work, pursuant to Labor Code Section 1725.5, shall not be accepted by Owner. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (California Labor Code Section 1771.4).
16. **Ineligible Subcontractor.** Any subcontractor who is ineligible to perform work on a public works project pursuant to Labor Code Sections 1777.1 or 1777.7 is prohibited from performing work on this Project.
17. **Additive and Deductive Items Alternates.** Pursuant to Public Contract Code Section 20103.8, if this bid solicitation includes additive and/or deductive items, the following method shall be used to determine the lowest bid:



- A. The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive

items.

- B. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation or Bid Proposal as being used for the purpose of determining the lowest bid price.
- C. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by Owner before the first bid is opened.
- D. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or the proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

If no method is checked, sub-paragraph A shall be used to determine the lowest bid. Owner retains the right to add to or deduct from the Contract any of the additive or deductive alternates included in the Bid Proposal.

18. **Bid Schedule.** Bidders are required to fully complete the Bid Schedule Form accompanying the Bid Proposal Form, and to submit the completed Bid Schedule Form with their Bid Proposal Form at or before Bid Time. In the event of a discrepancy between the actual total of the itemized prices shown on the Bid Schedule and the amount entered as the total Base Bid (and Alternate Bids) on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for the Base Bid shall be deemed the Base Bid price. Likewise, in the event of a discrepancy between the actual total of the itemized prices shown on the Bid Schedule for any Bid Alternate and the amount entered for such total Alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that Alternate shall be deemed the Alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid pursuant to Public Contract Code Section 5103.
19. **Other Required Bid Documents.** The Bidder is required to fully complete the following Bid documents and submit them along with the Bid Proposal, using the form provided by Owner:
 - a. Bidder's Questionnaire
 - b. Certificate of Bidder's Experience and Qualification
 - c. Site Walk Affidavit

- d. Subcontractor List
- e. Noncollusion Affidavit
- f. Insurance Acknowledgement
- g. Workers Compensation Certificate
- h. DIR Compliance Affidavit

Where required, the bid documents shall provide all the information requested and be appropriately signed and (if required) notarized. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A Bidder who submits Bid documents that are subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsive.

20. **Owner's Representative.** Owner's designated representative for this Project is: Bret Swain, PE, Senior Engineer, Moraga Public Works.
21. **Architect/Engineer.** The Landscape Architect for this Project is Gates + Associates, 1655 N. Main St., Ste. 365, Walnut Creek, CA 94596

BID PROPOSAL
Commons Park Picnic Area Renovation (CIP 19-302)

_____(“Bidder”) hereby submits this Bid Proposal to Town of Moraga (“Owner”) for the above- referenced project (“Project”) in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced therein.

1. **Bid Prices.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, including Alternates (if any), within the time required for full completion of the Work, for the prices set forth on the attached Bid Schedule. For this project the lowest bid will be determined based on the Total Bid price, which is the sum of the Base Bid and all Bid Alternatives.
2. **Addenda.** Bidder acknowledges receipt of the following addenda:

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

3. **Bidder’s Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:
 - A. Bidder has thoroughly examined the Contract Documents, and represents that, to the best of Bidder’s knowledge there are no errors, omissions, or discrepancies in the Contract Documents subject to the limitations of Public Contract Code Section 1104.
 - B. Bidder has had the opportunity to examine the Work site and local conditions at the Project location.
 - C. Bidder is fully qualified to perform the Work.
 - D. Bid has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.
4. **Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, that within seven (7) days following issuance of the notice of award to Bidder, Bidder shall:
 - A. Enter into a Contract with Owner in accordance with the terms of this Bid Proposal, by signing and submitting to Owner the Contract form included with the Contract Documents; and
 - B. Submit to Owner a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the

Contract Documents; and

- C. Submit to Owner the insurance certificate(s) and endorsement(s) as required by the Contract Documents.
5. **Bid Security.** As a guarantee that if awarded the Contract, it will perform its obligations under section 5, above, Bidder is enclosing bid security in the amount of ten percent (10%) of its Total Bid amount (as indicated in the Bid Schedule) in the following form:
 - A. A cashier's check or certified check payable to Owner and issued by _____

Bank in the amount of _____

Dollars (\$______).
 - B. A Bid Bond, using the Bid Bond form included with the Contract Documents, payable to Owner and executed by a surety licensed to do business in the State of California.

This Bid Proposal is hereby submitted on _____, 20____:

s/ _____

Name and Title [print]

Company Name

License # and Classification

Address

DIR Registration

City, State, Zip

Telephone

Fax

BID SCHEDULE
Moraga Commons Park Picnic Area Renovation (CIP 19-302)
(To be submitted with bid)

Base Bid

Bid Item	Item Description	Unit	Estimated Quantity	Unit Price	Total
1	Mobilization (Not to Exceed 5% of Total Bid)	LS	1		
2	Erosion Control	LS	1		
3	Landscape Preservation	LS	1		
4	Demolition	LS	1		
5	Tree Removal	EA	2		
6	Water line relocation	LF	150		
7	Grading	LS	1		
8	Concrete Paving	SF	3625		
9	Concrete Curb	LF	230		
10	BBQ Grills	EA	7		
11	Trash and Recycling Receptacles	EA	8		
12	Picnic Tables	EA	24		
13	Utility Table	EA	1		
14	Shade Structure	EA	1		
15	Demobilization	LS	1		

Total Bid	
-----------	--

Based on contract documents entitled Commons Park Picnic Area Renovation (CIP 19-302) Plans dated
02/01/2023

The bidder is required to provide prices for bid items 1 through 17. If a bid proposal for any bid item is incomplete, that specific bid proposal may be deemed non-responsive and subject to rejection. For the purposes of determining the lowest responsible bid, the lowest responsible bid will be determined as specified in the Instructions and Information for Bidders. The Town intends to award one contract only to the bidder who submits the lowest responsive responsible bid price among all bid proposals submitted.

END OF SECTION

SITE VISIT AFFIDAVIT
Moraga Commons Park Picnic Area Renovation CIP 19-302)
(To be submitted with bid)

NAME OF PROJECT: Commons Park Picnic Area Renovation (CIP 19-302), Town of Moraga, County of Contra Costa, State of California.

_____, being first duly sworn, deposes
(Printed Name of Contractor's Authorized Representative)

he or she is

_____, of _____,
(Title of Representative) (Bidder's Name)

the party making the bid, has visited the Site of the Work on _____ day of _____, 20____ as described in the Contract Documents and has examined and familiarized themselves with the existing conditions, as well as all other conditions relating to the construction which will be performed. The submitting of a bid shall be considered an acknowledgement on the part of the Bidder of familiarity with conditions at the site of Work. The Bidder further acknowledges that the site examination has provided adequate and sufficient information related to existing conditions which may affect cost, progress or performance of the Work.

(Authorized Signature)

(Date)

END OF SECTION

SUBCONTRACTOR LIST
Moraga Commons Park Picnic Area Renovation (CIP 19-302)
(To be executed by bidder and submitted with bid)

For each Subcontractor who will perform a portion of the Work in an amount in excess of ½ of one percent of the Bidder's total Contract Price,¹ the Bidder must list a description of the work, the name of the Subcontractor, the location of its place of business, and other information specified below. Note to Bidders: Please print legibly. Illegible forms may be rejected.

DESCRIPTION OF WORK	SUBCONTRACTOR NAME AND LOCATION OF PLACE OF BUSINESS	LICENSE NUMBER	DIR REGISTRATION NUMBER (LABOR CODE 1725.5)

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

****END OF SECTION****

NONCOLLUSION AFFIDAVIT
Moraga Commons Park Picnic Area Renovation (CIP 19-302)
(To be executed by bidder and submitted with bid)

PUBLIC CONTRACT CODE SECTION 7106

**NON-COLLUSION DECLARATION TO BE EXECUTED BY BIDDER AND SUBMITTED
WITH BID**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has 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].

BIDDER'S SIGNATURE: _____

NAME/TITLE OF SIGNATORY: _____

LEGAL NAME OF BIDDER: _____

END OF SECTION

BIDDERS QUESTIONNAIRE
Moraga Commons Park Picnic Area Renovation (CIP 19-302)
(To be executed by bidder and submitted with bid)

Submission of a completed Bidder's Questionnaire with the sealed bid is required for the above-referenced project ("Project"). Owner may use the completed Questionnaire to evaluate the Bidder's qualifications for this Project. The Questionnaire should be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part 1: Contact Information

Contractor Name: _____ ("Contractor")

Check One:

Corporation Partnership Sole Proprietorship

Address: _____

Phone: _____

Fax: _____

Owner of Company: _____

Contact Person: _____

Contractor's License Number(s): _____

Part 2: Contractor Experience

1. How many years has Contractor been in business under its present business name? _____

2. Has Contractor completed projects similar in type and size to this Project as a general contractor? _____

3. Has Contractor ever been disqualified on grounds that it is not responsible? _____

If yes, provide additional information on a separate sheet of paper regarding the disqualification, including, but not limited to, the name and address of the agency or

owner of the subject project, the type and size of the project, the reasons that Contractor was disqualified as not responsible, and the month and year in which the disqualification occurred.

4. Has Contractor ever been terminated from a construction project, either as a general contractor or as a subcontractor (other than as a termination for convenience)? _____ If yes, provide additional information on a separate sheet of paper regarding the termination, including, but not limited to, the name and address of the agency or owner of the subject project, the type and size of the project, whether Contractor was under contract as a general contractor or a subcontractor, the reasons that Contractor was terminated, and the month and year in which the termination occurred.
5. Provide information about Contractor's past projects performed as general contractor as follows:
 - 5.1 Six (6) most recently completed public works projects within the last three (3) years.
 - 5.2 Three (3) largest completed private projects within the last three (3) years; and
 - 5.3 Any project which is similar to this Project.

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

- a. Project Name
- b. Location
- c. Owner
- d. Owner Contact (name and current phone number)
- e. Architect or Engineer Name
- f. Architect or Engineer Contact (name and current phone number)
- g. Construction Manager (name and current phone number)
- h. Description of Project, Scope of Work Performed
- i. Initial Contract Value (at time of bid award)
- j. Final Cost of Construction (including change orders)
- k. Original Scheduled Completion Date
- l. Time Extensions Granted (number of days)
- m. Actual Date of Completion
- n. Number and amount of Stop Notices or Mechanic's Liens filed
- o. Amount of liquidated damages assessed against Contractor
- p. Nature and resolution of any claim, lawsuit, and/or arbitration between Contractor and the Owner

Part 3: Verification

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

Bidder's Signature _____

Name _____

Title _____

Company Name _____

Date _____

****END OF SECTION****

LIABILITY AND INSURANCE REQUIREMENTS

Moraga Commons Park Picnic Area Renovation (CIP 19-302)

INDEMNIFICATION

In addition to any other indemnity obligation in the Contract Documents, the Contractor shall indemnify, hold harmless and assume the defense of the Town, the Architect/Engineer, the Construction Manager and their elected officials, officers, agents, employees and representatives from all damages, costs, or expenses in law or equity, including attorney's fees, that may at any time arise to cause damages to property, or of personal injury received by reason of or in the course of performing work, which may be occasioned by any willful or negligent act or omission of the Contractor, any of the Contractor's employees, or any of its subcontractors arising out of work under this Contract.

Approval of any insurance contracts by the Town does not relieve the Contractor or subcontractors from liability under any indemnity or liability provision, and the Contractor shall be responsible for payment of all amounts it is obligated to pay thereunder, which have not been paid by such insurance contracts. The Town shall not be liable for any accident, loss, or damage to the work prior to its completion and acceptance.

INSURANCE REQUIREMENTS

General

After award of Contract, the Contractor shall promptly obtain, at its own expense, all the insurance required by these Insurance Requirements, and shall submit coverage verification for review and approval by the Town upon execution of the Contract.

The Notice to Proceed with the Work under this Contract will not be issued, and the Contractor shall not commence work, until such insurance has been approved by the Town. The Contractor shall not allow any subcontractors to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and verified by the Contractor. Such insurance shall remain in full force and effect at all times during the prosecution of the Work and until the final completion and acceptance thereof.

The Notice to Proceed does not relieve the Contractor of the duty to maintain such insurance as required by Town of Moraga Liability and Insurance Requirements for Contractors.

The Town reserves the right to occupy existing facilities under construction or to use or occupy parts of the Work as provided for in General Conditions Section 12.4, Use Prior to Final Completion. Insurance policies shall not restrict or limit such use.

Insurance Requirements for Contractors (with Construction Risks)

The Contractor shall procure and maintain for the duration of the contract insurance 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 the Contractor, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than
4. \$1,000,000 per accident for bodily injury or disease.
5. Course of Construction insurance form providing coverage for "all risks" of loss.

Minimum Limits of Insurance

The Contractor shall maintain limits no less than:

1. General Liability: Must be written on an "occurrence" basis \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$5,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$5,000,000 per accident for bodily injury or disease.
4. Course of Construction: equal to the completed value of the project and no coinsurance penalty provisions.

Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Town of Moraga. At the option of the Town of Moraga, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town of Moraga, its officers, officials, employees, agents and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The Town of Moraga, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed

by or on behalf of the Contractor products and completed operations of the Contractor, premises owned, occupied or used by the Contractor: or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town of Moraga, its officers, officials, employees, agents or volunteers.

1. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Town of Moraga, its officers, officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the Town of Moraga, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
2. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Town of Moraga, its officers, officials, employees, agents or volunteers.
3. The 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. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town of Moraga.

Course of construction policies shall contain the following provisions:

1. The Town of Moraga shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against Town of Moraga.

If the contractor maintains higher limits than the minimums shown above, the Town of Moraga requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Town of Moraga.

Claims Made Policies

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not placed with another claims-made policy form with a retroactive date prior to the contract effective, or start or work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Town of Moraga for review.

5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

Verification of Coverage

The Contractor shall furnish the Town of Moraga with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the Town of Moraga. All endorsements are to be received and approved by the Town before work commences. As an alternative to the Town's forms, the Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII

Waiver of Subrogation

The Contractor hereby grants to the Town of Moraga a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Insurance Forms

The Town of Moraga will accept the ACORD 25-S Certificate of Liability Insurance Form accompanied by a Commercial General Liability Endorsement Form No. CG 20 10 11 85 and an Automobile Liability Endorsement Form. The Town will accept the Certificate of Worker's Compensation Insurance Form provided by the "State Compensation Insurance Fund".

Note: The General Liability and Automobile Liability endorsements must contain

the provisions listed in the section above titled "Other Insurance Provisions".

Submittal of any forms other than the above listed preapproved forms, failure to submit forms, failure to submit forms with required provisions may delay award of contract until all requirements are met in accordance with this Section.

****END OF SECTION****

INSURANCE ACKNOWLEDGMENT
Moraga Commons Park Picnic Area Renovation (CIP 19-302)
(To be executed by bidder and submitted with bid)

I have reviewed the Town of Moraga's insurance requirements for this project, and I am aware of the types and amounts of insurance coverages that are required. I am also aware that my insurance company is required to use the Certificate of Insurance Form, and General Liability Special Endorsement, Automobile Liability Special Endorsement, and Workers' Compensation and Employer's Liability Special Endorsement Forms, provided herein. I have reviewed the Town of Moraga's insurance requirements with my insurance carrier, and I will be able to provide the required insurance coverages on the specified forms if awarded this project.

Bidder's Signature _____

Date _____

****END OF SECTION****

WORKERS' COMPENSATION INSURANCE CERTIFICATE
Moraga Commons Park Picnic Area Renovation (CIP 19-302)
(To be executed by bidder and submitted with bid)

In accordance with California Labor Code Section 1861, prior to commencement of work on the Contract, the Contractor shall sign and file with the City the following certification:

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

Bidder's Signature _____

Name _____

Title _____

Company Name _____

Date _____

END OF SECTION

DIR AND SB 96 COMPLIANCE AFFIDAVIT
Moraga Commons Park Picnic Area Renovation (CIP 19-302)
(To be executed by bidder and submitted with bid)

No contractor or subcontractor may be listed on a bid proposal for a public works project or be awarded a contract for public work on a public works project unless registered with the California Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1). NOTE: *This section does not apply to public works performed of \$25,000 or less comprised of construction, alteration, demolition, installation, or repairs, or of \$15,000 or less comprised of maintenance.* Pursuant to Public Contract Code section 4104, bidders must provide the DIR registration numbers for all subcontractors listed in a bid for a project.

This project is subject to compliance monitoring and enforcement by the DIR.

In accordance with California Labor Code as amended through Senate Bill SB 96, prior to commencement of the Contract, all Contractors are required to register, and maintain active registration throughout the duration of the contract with the DIR. For information regarding registration, please go to: <http://www.dir.ca.gov/>

I, the Bidder, certify that: _____

"I am aware of the provisions of Senate Bill SB 96 and subsequent DIR regulations, which require contractors to comply with all labor compliance requirements including, but not limited to, prevailing wage requirements, Labor Code sections 1725.5, 1771.1 (a), 1774-1776, 1777.5, 1813, 1815, Public Works Contractor Registration Program, Electronic Certified Payroll Records to Labor Commissioner, Public Contract Code section 4104, and other requirements described in the DIR website. I will comply with such provisions before commencing the performance of the work of this contract and maintain compliance throughout the completion of said contract."

s/ _____

CSLB License # and Classification

DIR Registration Number

Labor Classifications

Labor Classifications (cont.)

BID BOND

Moraga Commons Park Picnic Area Renovation (CIP 19-302)

(To be executed by bidder and submitted with bid)

_____ ("Bidder") has submitted a bid, dated _____, 20____ ("Bid"), to the Town of Moraga ("Owner") for work on the Commons Park Picnic Area Renovation- Town CIP No. 19-302 ("Project").

Pursuant to its duly executed bid bond ("Bid Bond"), Bidder as Principal and _____, its surety ("Surety"), are bound to Owner as Obligee in the penal sum of ten percent (10%) of the Total Bid amount set forth in the Bid Schedule (the "Bond Sum"). Bidder and Surety hereby bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. If Bidder is awarded the Contract for the Project, Bidder shall enter into a contract with the Owner in accordance with the terms of the Bid.
2. Within seven (7) days following issuance of the notice of award to Bidder, Bidder shall submit to Owner the following:
 - 2.1. The executed Contract, using the form provided by Owner in the Project contract documents ("Contract Documents");
 - 2.2. A payment bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
 - 2.3. A performance bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
 - 2.4. The insurance certificate(s) and endorsement(s) required by the Contract Documents.
 - 2.5. All other documents required by Contract Documents.
3. If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to Owner.

SURETY:

s/ _____

Name: _____

Title: _____

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

CONTRACTOR:

s/ _____

Name: _____

Title: _____

CONTRACT

Moraga Commons Park Picnic Area Renovation (CIP 19-302)

This public works contract ("Contract") is entered into by and between Town of Moraga ("Owner") and _____ ("Contractor") for work on the Commons Park Picnic Area Renovation- Town CIP No. 19-302 ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 2022, the Owner authorized the award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents are comprised of collectively: the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; any escrow agreement for securities in lieu of retention; the liability and insurance requirements; certificates of insurance and proof of liability coverage; the General Conditions; the Supplemental Conditions, if any; the conformed Project plans, drawings and specifications; applicable provisions of the Caltrans Standard Specifications and the Special Provisions; Change Orders, if any; the guaranty; the agreement and release of any and all claims; and (if any) items identified as Contract Documents in the General Conditions. Approved Shop Drawings, other Contractor submittals, the reports and drawings of subsurface and physical conditions provided for informational purposes only do not comprise Contract Documents.
3. **Contractor's Services.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. Contractor shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, Owner shall pay Contractor _____ Dollars (\$_____) (the "Contract Price"), in accordance with the payment provisions set forth in the General Conditions. The Contract Price is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, subconsultants, architects, engineers, and

vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

5. **Time for Completion.** Contractor shall provide an executed contract and the necessary bonding and insurance certifications within seven (7) days of the notice of award, prior to the construction start date of _____. Contractor shall fully complete the Work for the Project within _____ working days from the commencement date given in the notice to proceed. Contract execution and work completion are collectively referred to as the "Contract Times". By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Times, Owner may assess liquidated damages in the amount of One Thousand Dollars (\$1,000) for each day of unexcused delay in substantial completion, Six Hundred Dollars (\$600) for each day of unexcused delay in final completion and the Contract Price shall be reduced accordingly.
7. **Labor Code Compliance.** This public works Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including, but not limited to, requirements pertaining to wages, working hours and workers' compensation insurance. Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.
8. **Workers' Compensation Certification.** Pursuant to Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
9. **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft,

classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

10. **Notice.** Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by e-mail as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party shall be given as follows:

	Owner	Contractor
Name	Town of Moraga	
Address	329 Rheem Boulevard	
City/state/zip	Moraga, CA 94556	
Phone	(925) 888-7026	
Fax	(925) 376-5203	
Attn:	Shawn Knapp	
Email	sknapp@moraga.ca.us	
Copy to:	publicworks@moraga.ca.us	

11. **General Provisions.**

- 11.1. **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without Owner's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 11.2. **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Supplemental General Conditions.
- 11.3. **Governing Law and Venue.** This Contract shall be governed by California law and venue shall be in the Superior Court of the County in which the Project is located, and no other place.
- 11.4. **Amendment.** No amendment or modification of this Contract shall be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 11.5. **Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between Owner and Contractor. If any provision of this Contract, or portion

thereof, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract shall remain in full force and effect.

- 11.6. **Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party.

{This Space Intentionally Blank}

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

OWNER:

s/ _____
Brian Dolan
Town Manager

Date: _____

Attest:

s/ _____
Yashin Abbas
Town Clerk

Date: _____

Seal:

CONTRACTOR:

s/ _____
Name: _____
Title: _____

Company: _____
Address: _____

Approved as to Form:

s/ _____
Michelle Marchetta Kenyon
Town Attorney

Date: _____

Approved:

s/ _____
Annie To
Director of Finance

Date: _____

PAYMENT BOND

Moraga Commons Park Picnic Area Renovation (CIP 19-302)

Town of Moraga ("Owner") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Commons Park Picnic Area Renovation- Town CIP No. 19-302 ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. Pursuant to this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to Owner as Obligee in an amount not less than _____ Dollars (\$_____) ("Bond Sum"), pursuant to California Civil Code Sections 9550, et seq.
2. If Contractor or any of its Subcontractors fails to pay any of the persons named in California Civil Code Section 9100 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and its Subcontractors, pursuant to Section 13020 of the California Unemployment Insurance Code, with respect to the work and labor, that Surety will pay for the same, and also, in case suit is brought upon the Bond, a reasonable attorney's fee, to be fixed by the court.
3. This Bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
4. If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations pursuant to this Bond shall be null and void. Otherwise, Surety's obligations shall remain in full force and effect.
5. Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Owner waives requirement of a new bond for any supplemental contract pursuant to Civil Code Section 9550.
6. This Bond shall be governed by California law, and any dispute pursuant to this Bond shall be venued in the Superior Court of the County in which the Project is located, and no other place. Surety shall be responsible for Owner's attorneys' fees and costs in any action to enforce the provisions of this Bond.
7. This Bond is entered into and is effective on _____, 20____. Five (5) identical counterparts of this Bond, each of which shall be deemed an original for all purposes, are hereby executed and submitted.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

PERFORMANCE BOND

Moraga Commons Park Picnic Area Renovation (CIP 19-302)

Town of Moraga ("Owner") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Commons Park Picnic Area Renovation - Town CIP No. 19-302 ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. Pursuant to this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to Owner as Obligee in an amount not less than _____ Dollars (\$_____) ("Bond Sum"). The Contractor and Surety hereby bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein.
2. If Contractor fully performs its obligations under the Contract, Surety's obligations under this Bond shall become null and void. Otherwise Surety's obligations shall remain in full force and effect. Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of Work under the Contract.
3. Upon making a demand on this Bond, Owner shall make the Contract Balance available to Surety for completion of the work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by Owner to the Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or back charges to which Owner is entitled under the terms of the Contract.
4. Upon written notification from Owner that Contractor is in default, Surety shall promptly (within forty (40) calendar days) act to remedy the default through one of the following courses of action:
 - 4.1. Arrange for completion of the Work under the Contract by Contractor, with the Owner's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 4.2. Arrange for completion of the Work under the Contract by qualified contractor acceptable to Owner, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense, or
 - 4.3. Undertake to perform and complete the Contract itself, through its agents or through independent contractors or Construction entities; provided, that Surety may not select Contractor as its agent or independent contractor or Contractor without Owner's consent; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph 5 below, for the performance and completion of the Contract and, as soon as practicable after

theError! Reference source not found. and 6.3 below

5. At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2, 4.3, or 4.4 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Contractor's Contract obligations. Surety's obligations include, but are not limited to:
 - 6.1. Contractor's obligations to complete the Contract and correct Defective Work;
 - 6.2. Contractor's obligations to pay liquidated damages; and
 - 6.3. To the extent otherwise required of Contractor under the Contract, Contractor's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Contractor's Default.
7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten (10) Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Contractor Default. To the extent Surety's independent default causes Owner to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which Owner is entitled to receive under the Contract, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.2, 4.3, or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Bond Sum.
9. No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Contract or to related subcontracts, design agreements, purchase orders and other obligations,

including changes of time, and of any Owner action in accordance with Paragraph 4 above. Surety consents to all terms of the Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any Owner action in accordance with Paragraph 4 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default.

11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein.
12. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in the Contract. Actual receipt of notice by Surety, Owner or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. This Bond shall be governed by California law, and any dispute pursuant to this Bond shall be venued in the Superior Court for the County in which the Project is located, and no other place. Surety shall be responsible for Owner's attorneys' fees and costs in any action to enforce the provisions of this Bond.
14. This Bond is entered into and effective on _____, 20_____. Five (5) identical counterparts of this Bond, each of which shall be deemed an original for all purposes, are hereby executed and submitted.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

GENERAL CONDITIONS
Moraga Commons Park Picnic Area Renovation (CIP 19-302)

Table of Contents:

Article 1 – Definitions	1
Article 2 – Preliminary Matters	9
Article 3 – Roles and Responsibilities	11
Article 4 – Contract Documents	16
Article 5 – Bonds, Indemnity and Insurance.....	20
Article 6 – Contract Time	24
Article 7 – Contract Modification	29
Article 8 – General Construction Provisions.....	33
Article 9 – Payment.....	43
Article 10 – Labor Provisions	50
Article 11 – Safety Provisions	53
Article 12 – Completion and Warranty Provisions	56
Article 13 – Dispute Resolution	59
Article 14 – Suspension and Termination	64
Article 15 – Miscellaneous Provisions.....	66

Supplemental Conditions

F

Article 1
Definitions

1. Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are generally capitalized in the Contract Documents, with the exception of the words "day," and "install."
 - 1.1. Addendum means Written or graphical instruments issued prior to the opening of Bids, which clarify, correct or change the Bidding requirements or the proposed contract documents.
 - 1.2. Allowance means an amount included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after Work on the Project is underway. If the Contract Price includes an Allowance and the cost of performing the Work covered by that allowance is greater or less than the Allowance, the Contract Price shall be increased or decreased accordingly.
 - 1.3. Architect/Engineer means the California-licensed individual(s) or firm(s) retained by Owner to provide architectural or engineering services for the Project. If no Architect/Engineer has been retained for this Project, any reference to Architect/Engineer shall be deemed to refer to California-licensed Architect or Engineer in the employ of or under contract to the Owner.
 - 1.4. Authorized signatory means a representative of the Town of Moraga who is authorized to sign Documents based on the Town's policies, authorities delegated by the Town Council in resolution, and applicable laws and regulations.
 - 1.5. CalTrans means the California Department of Transportation.
 - 1.6. Caltrans Standard Plans means Standard Plans issued by the State of California, Department of Transportation, 2010 edition. All metric measurements or quantities in the Caltrans Standard Plans shall be disregarded, and equivalent United States measures used.
 - 1.7. Caltrans Standard Specifications means Standard Specifications issued by the State of California, Department of Transportation, 2010 edition and corresponding revised standard specifications (RSS). Any reference therein to a State agency or officer not otherwise defined in this Contract shall be determined by the Construction Manager. All metric measurements or quantities in the Caltrans Standard Specifications shall be disregarded, and equivalent United States measures used.
 - 1.8. Change Order means a written document signed by Owner and Contractor after execution of the Contract, which becomes part of the Contract

Documents and modifies the Contract scope of Work, the Contract Price, and/or the Contract Time.

- 1.9. Claim means a separate demand by Contractor for change in the Contract Time or Contract Price, that has previously been submitted to Owner in accordance with the requirements of the Contract Documents, and which has been rejected by Owner, in whole or in part.
- 1.10. Construction Manager means the individual(s) or firm retained by Owner to provide construction management services for the Project. If no Construction Manager has been retained for this Project, any reference to Construction Manager shall be deemed to refer to Owner. The Owner may, in its sole discretion, assign any of Construction Manager's rights, duties or obligations to anyone else.
- 1.11. Contract (sometimes referred to as Agreement) means the signed agreement between Owner and Contractor to perform the Work within the designated time for the compensation as described in the Contract Documents. The Contract supersedes prior negotiations, representation, or agreements, whether written or oral.
- 1.12. Contract Documents means those items so designated in the Agreement. Approved Shop Drawings, other Contractor submittals, the reports and drawings of subsurface and physical conditions provided for informational purposes only do not comprise Contract Documents.
- 1.13. Contract Price means the total compensation to be paid to the Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order and/or adjusted pursuant to an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, or equipment following submission of the Bid Proposal. The Contract Price is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, subconsultants, architects, engineers, and vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

- 1.14. Contract Time means the number of working days for performance of

the Work, as set forth in the Contract and as may be amended by Change Order and/or extensions of time.

1.15. Contractor means the individual, partnership, corporation, or joint-venture appropriately licensed by the State of California who signed the Contract with the Owner to perform the Work as described in the Contract Documents.

1.16. Council means the Town of Moraga Town Council, the governing body of the Town of Moraga.

1.17. County means Contra Costa County, California.

1.18. County Standard Plans means [Contra Costa County Public Works Department Standard Plans, March 2014](#).

1.19. Day means a period of twenty-four (24) hours measured from midnight to the next midnight, unless otherwise defined. If not otherwise specified in the contract, days shall be presumed to be calendar days.

1.19.1. Calendar day means any day on the calendar Sunday through Saturday.

1.19.2. Working day means a time measure unit for work progress. A working day is any day, except:

1.19.2.1. Saturday, Sunday, and Holidays

1.19.2.2. A day on which the Contractor cannot work due to any of the following:

1.19.2.2.1. A Weather Day, or other climactic conditions so severe as to substantively impair the workmanship or quality as agreed upon by the Owner.

1.19.2.2.2. Suspension of work that the contractor and the owner have agreed benefits both parties.

1.19.2.2.3. Unanticipated event not caused by and outside of the control of either party:

- i) *Act of God;*
- ii) *Act of a public enemy;*
- iii) *Epidemic;*
- iv) *Fire;*
- v) *Flood;*

- vi) *Governor-declared state of emergency; or*
- vii) *Quarantine restriction.*

1.19.2.2.4. Unanticipated Issues involving a third party, including:

- i) *Industry-wide labor strike;*
- ii) *Industry-wide material shortage;*
- iii) *Freight embargo by State or federal order, where sufficient time was provided for delivery;*
- iv) *Jurisdictional requirements of a law enforcement agency; or*
- v) *Workforce labor dispute of a utility or non-Town facility owner resulting in a non-town facility rearrangement, including installation, relocation, alteration, or removal of the facility, not described and not solely for the Contractor's convenience;*

1.19.3. A non-working day means any calendar day that is not a working day.

1.20. Delay means an event that extends the completion of an activity.

1.21. Department means the Public Works Department for the Town of Moraga and its duly authorized representatives.

1.22. Director means the Director of Public Works for the Town of Moraga.

1.23. Drawing means that part of the Contract Documents prepared or approved by a licensed Architect/Engineer that graphically or pictorially show the scope, extent and character of the Work to be performed by the Contractor. Shop drawings and other submittals are not Drawings as so defined.

1.24. Final Acceptance mean when all Work is deemed completed in accordance with the Contract and the Work is accepted by the Town Council.

1.25. Final Completion means the Contractor has fully completed all of the Work required by the Contract Documents, including all punch list items and all required submittals, to the Owner's satisfaction. The date of Final Completion is the date indicated on the Notice of Completion filed in the County Recorder's office. This date will be used to establish the start date of the one-year warranty period.

1.26. Final Payment means payment of the unpaid Contract Price, less amounts withheld pursuant to the Contract Documents, including, but not limited to, liquidated damages, unreleased stop notices, amounts subject to setoff, and up to 150% of unresolved third-party claims for which Contractor is required to indemnify Owner, and up to 150% of amounts in dispute as

authorized by Public Contract Code Section 7107.

1.27. Force Account Work means Work ordered on a construction project without an existing agreement on its cost and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.

1.28. Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, exposure, disposal, or cleanup.

1.29. Holiday means any non-working day shown below:

- i) *New Years Day*
- ii) *Martin Luther King, Jr Day*
- iii) *Presidents Day*
- iv) *Memorial Day*
- v) *Independence Day (4th of July)*
- vi) *Labor Day*
- vii) *Veterans Day*
- viii) *Thanksgiving Day*
- ix) *Day after Thanksgiving Day*
- x) *Christmas Eve*
- xi) *Christmas Day*

If a Holiday falls on a Sunday, the Monday following is a holiday. If a Holiday falls on a Saturday, the preceding Friday is a holiday. Additionally, the Town does not work on alternating Fridays of every month. Special accommodations shall be made at least 72 hours prior by the Contractor for City staff to be available for any work to occur on these Fridays.

1.30. Inspector means the individual(s) or firm(s) retained by Owner to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

1.31. Install means to fix in place for materials, and to fix in place and connect for equipment in a manner in which the equipment or materials will perform properly and as specified in the Contract Documents and applicable standards.

1.32. JAMS (*formerly* Judicial Arbitration and Mediation Services, Inc.) is an

organization that provides alternative dispute resolution (ADR) services, including mediation and arbitration.

- 1.33. **Laboratory** means the designated laboratory authorized by the Town of Moraga to test materials and work involved in the contract.
- 1.34. **Milestone** means a principal event specified in the Contract Documents or marking a significant change in Work relating to an intermediate completion date or time prior to substantial completion of all work.
- 1.35. **Notice of Award** means the written notice by the Owner to the successful bidder stating that upon timely compliance by the successful bidder with the conditions precedent listed therein and executing the required Agreement, the Owner will sign and deliver the signed Agreement.
- 1.36. **Notice to Proceed** means a written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Work in accordance with the Contract Documents.
- 1.37. **Owner** means the Town of Moraga, and includes its governing body, officers, employees, and authorized representatives.
- 1.38. **Progress Schedule** means a representation of a timetable, prepared and maintained by the Contractor, describing the sequence and duration of the activities comprising the Contractor's plan for accomplishing the Work within the Contract Time.
- 1.39. **Project** means the public works project referenced in the Contract Documents.
- 1.40. **Project Schedule** means an overall progress schedule, prepared and maintained by the Contractor, of sufficient detail, as determined by the Construction Manager, to show all Work activities required to achieve Final Acceptance of the Project. The Project Schedule is regularly updated by the Contractor as the schedule changes due to Owner authorized change orders or excusable delays.
- 1.41. **Punchlist** means a list of work not conforming to Contract Documents that the Contractor must complete prior to Final Completion, including incomplete work, defective work, incorrect work or incidental damage to existing finishes, surfaces, materials, and structures. The list is prepared by the Construction Manager upon a request for substantial completion, and in collaboration with the Owner, the Contractor and the Architect/Engineer.
- 1.42. **Quality Control Plan** means the Contractor's plan documenting the process to meet or exceed construction quality requirements through control

of construction means and methods, and any inspection, sampling and testing required. This is not the same as the Owner's quality assurance.

- 1.43. Schedule of Submittals means a representation of a timetable, prepared and maintained by the Contractor, describing the sequence and duration of the activities comprising the Contractor's plan for delivery of preparation, delivery and review of submittals for approval by the Architect/Engineer to support the Contractor's Project Schedule.
- 1.44. Schedule of Values means a representation of contract values, prepared and maintained by the Contractor. The Schedule of Values includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices shall include an appropriate amount of overhead and profit applicable to each item of Work.
- 1.45. Shop Drawings means all drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- 1.46. Specifications (also referred to as Special Provisions) means that part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
- 1.47. Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor to perform a specific portion of the Work.
- 1.48. Substantial Completion means the time at which the Work (or specified part thereof) has progressed to the point where, in the opinion of the Construction Manager, the Work (or specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be safely and conveniently utilized for the purposes for which it is intended. The term "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial completion thereof.
- 1.49. Successful Bidder means the Bidder submitting a responsive Bid to whom the Owner makes an award.
- 1.50. Supplemental Conditions (also referred to as Supplemental General Conditions), means that part of the Contract Documents which amends or supplements these General Conditions
- 1.51. Town means The Town of Moraga, acting by and through its designated

representatives.

- 1.52. Weather Day means, for work on the critical path only, a working day in which there is threatened (greater than 50% probability of precipitation forecasted within 24 hours prior) or actual precipitation of 0.1 inches or more, based on the records of the National Oceanic & Atmospheric Administration (NOAA) weather station closest to the Worksite.
- 1.53. Work means the construction, installation, services, and related activities necessary or incidental to performing the Contractor's obligations with respect to the Project in conformance with the requirements of the Contract Documents.
- 1.54. Normal Working Hours means the normal hours during a working day in which Work may be undertaken, as specified in the Supplemental Conditions.
- 1.55. Work Change Directive is an order to perform additional work that is deemed necessary if the Owner and the Contractor cannot agree upon a cost or schedule for proposed additional work or when they agree that delays could cause damage such that work must proceed immediately.
- 1.56. Worksite means the place or places where the Work is performed.

Article 2

Preliminary Matters

2. The following Article discusses some preliminary matters.
 - 2.1. Payment and Performance Bonds: The Contractor shall deliver performance and payment bonds, each for the full amount of the Contract or as described in the Contract Documents. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
 - 2.2. Evidence of Insurance: Before any Work at the Site is started, the Contractor shall deliver certificates of insurance and additional insured identified in these General Conditions or any Supplemental Conditions, certificates of insurance along with any attachments for indemnification and additional insured as required in the Contract Documents. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such evidence of insurance as Contractor may be required to furnish.
 - 2.3. Copies of Documents: The Owner shall furnish to Contractor up to five (5) printed or hard copies of the conformed Plans and Specification.
 - 2.4. Commencement of Contract Time; Notice to Proceed: The Contract Time will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.
 - 2.5. Starting the Work: The Contractor shall start to perform the Work on the date when the Contract Time commence to run. No Work shall be done at the Site prior to the date on which the Contract Time commence to run.
 - 2.6. Before Starting Construction:
 - 2.6.1. Preliminary Schedules: Within ten (10) working days after the Effective Date of the Notice to Proceed (unless otherwise specified in the General Conditions), Contractor shall submit to Construction Manager for timely review:
 - 2.6.1.1. A preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2.6.1.2. A preliminary Schedule of Submittals; and

2.6.1.3. A preliminary Schedule of Values.

2.7. Preconstruction Conference: Before any Work at the Site is started, a conference attended by Owner, Contractor, Construction Manager and Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.6.1, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.8. Initial Acceptance of Schedules and Schedule of Values: At least ten (10) days before submission of the first Application for Payment, a conference attended by Contractor, Construction Manager, and others as appropriate will be held to review for acceptability to Construction Manager the items described in Paragraph 2.6.1. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

2.8.1. The Progress Schedule will be acceptable to Construction Manager if it provides an orderly progression of the Work to completion within the Contract Time. Such acceptance will not impose on Construction Manager responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2.8.2. Contractor's Schedule of Submittals will be acceptable to the Construction Manager and the Architect/Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

2.8.3. Contractor's Schedule of Values will be acceptable to Construction Manager as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work for each Bid Item as submitted on the Bid Sheet, as provided in the definition of Schedule of Values.

Article 3

Roles and Responsibilities

3. The following section discusses roles and responsibilities.

3.1. Architect/Engineer.

- 3.1.1. Architect/Engineer, as the Owner's representative, is responsible for the overall design of the Project, and is authorized to act on Owner's behalf to ensure performance of the Work in compliance with the Contract Documents.
- 3.1.2. Architect/Engineer shall have authority to stop the Work when necessary to ensure compliance with the requirements of the Contract Documents. Architect/Engineer shall also have authority to reject any and all work and materials that do not conform to the requirements of the Contract Documents.
- 3.1.3. Architect/Engineer shall decide all questions pertaining to performance of the Work, and shall provide written decisions on all matters relating to the execution and progress of the Work or interpretation of the Contract Documents. The Architect/Engineer's decision regarding interpretation of the drawings or specifications shall be final and conclusive.
- 3.1.4. Architect/Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Architect/Engineer will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- 3.1.5. Architect/Engineer may review Contractor's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.

3.2. Construction Manager

- 3.2.1. The Construction Manager, as the Owner's representative, is responsible for inspecting the Work and enforcing provisions of the Contract Documents and the quality assurance of the Project on behalf of the Owner and is authorized to act on Owner's behalf to ensure performance of the Work in compliance with the Contract Documents to the extent provided in Contract Documents.

- 3.2.2. The Construction Manager, or Architect/Engineer through the

Construction Manager, will, with reasonable promptness, render a written decision on the issue referred. If the Owner or the Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Time or both, a Claim may be made under Article 13. The date of the Construction Manager's or Architect/Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Article 13.

- 3.2.3. The Construction Manager will have authority to reject Work as specified in Paragraph 9.6.
- 3.2.4. The Construction Manager will also have authority to require special inspection or testing of the Work as specified in Paragraph 8.8.
- 3.2.5. The Construction Manager will not supervise, direct, control, or have authority over or be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. The Construction Manager and the Architect/Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.
- 3.2.6. The Construction Manager may review the Contractor's Submittals, such as Schedules, invoices, invoicing support documentation, but only for conformance with Contract Documents.

3.3. Contractor.

- 3.3.1. The Contractor shall provide all labor, materials, equipment and services necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of the Owner.
- 3.3.2. The Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. The Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other contractors and Subcontractors, unless the Contract Documents provide other specific instructions.
- 3.3.3. The Contractor shall provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents.
- 3.3.4. The Contractor shall, at all times during performance of the Work,

provide a qualified full-time superintendent, acceptable to the Owner, and assistants, as necessary, who shall be physically present at the Project site while any aspect of the Work is being performed.

3.3.5. The Contractor shall, at all times, ensure that the Work is performed in a good workman-like manner and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

3.3.6. The Contractor shall comply with the Owner's, the Construction Manager's, and the Architect/Engineer's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. The Owner's, Construction Manager's, and/or Architect/Engineer's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of the Work.

3.3.7. The Contractor shall be responsible to the Owner for the acts or omissions of any party or parties performing portions of the Work for or on behalf of the Contractor or its Subcontractors.

3.3.8. The Contractor shall promptly correct, at the Contractor's sole expense, any Work that is deficient or defective in workmanship, materials, and equipment.

3.4. Subcontractors.

3.4.1. All Work which is not performed by the Contractor with its own forces shall be performed by Subcontractors. The Owner reserves the right to approve any and all Subcontractors proposed to perform the Work.

3.4.2. The Contractor shall require every Subcontractor and material supplier to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's or material supplier's portion(s) of the Work, and to likewise bind their subcontractors or material suppliers. Nothing in these Contract Documents shall create a contractual relationship between a Subcontractor and the Owner, but the Owner shall be deemed to be a third-party beneficiary of the contract between the Contractor and each Subcontractor.

3.4.3. If the Contract is terminated, each subcontract agreement shall be assigned by the Contractor to the Owner, subject to the prior rights of any surety, provided that the Owner accepts such assignment by written notification, and assumes all rights and obligations of Contractor

pursuant to each such subcontract agreement.

3.4.4. The Contractor shall comply with the Subcontractor Listing law, Public Contract Code Sections 4101, et seq. The Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid except as may be allowed by law.

3.4.5. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without the Owner's written approval. At the Owner's request, the Contractor shall provide the Owner with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.

3.5. Coordination of Work.

3.5.1. The Owner reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. The Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and shall avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, the Contractor shall hold harmless and indemnify the Owner, the Architect/Engineer, and the Construction Manager against any and all claims arising from or related to the Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

3.5.2. Before proceeding with any portion of the Work affected by the construction or operations of others, the Contractor shall give the Construction Manager and Architect/Engineer prompt written notification at least 48 hours prior to placement of materials order, scheduling, or commencement of dependent work activities, of any defects the Contractor discovers that will prevent the proper execution of the Work. Failure to give notice of any such patent defects shall be deemed acknowledgement by the Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

3.6. Submittals.

3.6.1. The Contractor shall submit to the Construction Manager to route to the Architect/Engineer for review, all submittals, including Shop Drawings, samples, product data and similar submittals, required by the Contract Documents. The Contractor shall coordinate with the Construction Manager to schedule submittals and submit them in a timely manner to provide adequate time for reviews, and revisions as needed. Unless otherwise specified in the Contract Documents, all submittals shall be submitted at least 21 days prior to Work requiring a

determination by the Engineer/Architect of "No Exceptions Taken" for said submittals. Work shall not commence without review of the related submittals and a determinate of "No Exceptions".

3.6.2. The Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

3.6.3. The Contractor shall ensure that its submittals are prepared and delivered in a manner consistent with the schedule of Work and in such time and sequence so as not to delay the performance of the Work or completion of the Project.

3.6.4. Each submittal shall include the Project name and location, the Contractor's name and address, the name and address of any Subcontractor or material supplier involved with the submittal, the date, and references to applicable specification section(s) and/or drawing and detail number(s).

3.6.5. If corrections are required, the Contractor shall promptly make and submit any required corrections in full conformance with the requirements of this section.

3.6.6. Review and determination of "No Exception" of a submittal by the Construction Manager and Architect/Engineer shall not relieve Contractor from complying with the requirements of the Contract Documents.

3.6.7. Any Work performed without prior determination of "No Exception" for a required submittal shall be performed at the Contractor's risk, and Contractor may be required to bear the costs incident thereto, including, but not limited to, the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Architect/Engineer, Construction Manager, or Inspector.

3.6.8. The proposed date for submission of Submittals shall be shown on the Project Schedule and Progress Schedules (as well as Schedule of Submittals) prepared by the Contractor, and shall not be indicated as critical path items of work.

Article 4

Contract Documents

4. The following section discusses some contract documents.

4.1. Interpretation of Contract Documents.

4.1.1. The drawings and specifications are complementary. If Work is shown on one but not on the other, the Contractor shall perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The drawings and specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown therein. Contractor shall perform all work and services and supply all things reasonably related to and inferable from the Contract Documents.

4.1.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to the Owner.

4.1.3. If the Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the drawings or specifications, the Contractor shall immediately notify the Architect/Engineer and request clarification of such. The Architect/Engineer's clarifications or interpretations shall be final and binding.

4.1.4. Clarifications and interpretations with respect to the design intent of the Contract Documents shall be issued by the Architect/Engineer through the Construction Manager, and clarifications and interpretations with respect to administrative matters shall be issued by the Construction Manager.

4.1.5. In the event of a conflict between the drawings and specifications, the specifications shall control. Figures control over scaled dimensions.

4.1.6. Any terms that have well-known technical or trade meanings shall be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

4.1.7. The Contractor shall verify all relevant measurements at the Worksite before ordering any material or performing any Work and

shall be responsible for the correctness of those measurements.

4.1.8. The cross referencing of specification sections under the subparagraph heading "Related Sections include but are not necessarily limited to:" and elsewhere within each specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross referencing provided and shall be responsible to coordinate the entire work under the Contract Documents and provide a complete Project whether or not the cross referencing is provided in each section or whether or not the cross referencing is complete.

4.2. Reference Standards, Specifications, Codes, Laws, and Regulations

4.2.1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall, unless otherwise provided in Contract Documents, mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

4.2.2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of the Owner, Contractor, Architect/Engineer or Construction Manager, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the Owner, Architect/Engineer or Construction Manager, or any of their related entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

4.3. Reporting Discrepancies:

4.3.1. The Contractor's Review of Contract Documents Before Starting Work: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. The Contractor shall promptly report in writing to the Construction Manager any conflict, error, ambiguity, or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Architect/Engineer through the Construction Manager before proceeding with any Work affected thereby.

4.3.2. The Contractor's Review of Contract Documents During Performance of Work: If, during the performance of the Work, the Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, the Contractor shall promptly report it to the Construction Manager in writing. The Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 11.6) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 4.5.

4.4. Resolving Discrepancies:

4.4.1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

4.4.2. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

4.4.3. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

4.5. Amending and Supplementing Contract Documents:

4.5.1. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

4.5.2. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

4.5.2.1. A Work Change Directive

4.5.2.2. The Architect/Engineer's approval of a Shop Drawing or Sample; or

4.5.2.3. The Architect/Engineer's written interpretation or clarification of matters of design intent issued through the

Construction Manager, and the Construction Manager's written interpretation or clarification of administrative matters.

4.6. Order of Precedence: Information included in one Contract Document but not in another shall not be considered a conflict or inconsistency. In case of any conflict or inconsistency among the Contract Documents, the following order of precedence shall apply, beginning from highest to lowest: approved Change Orders; addenda; the Contract; the notice of award and notice to proceed; the Supplemental Conditions, if any; the General Conditions; the Special Provisions; the payment and performance bonds; the plans, specifications and drawings; the County Specifications, Caltrans Standard Plans and Caltrans Standard Specifications not specifically referenced in the Contract Documents, in that order. Also: written numbers take precedence over figures unless obviously incorrect; figured dimensions take precedence over scaled dimensions; large-scale drawings take precedence over small-scale drawings; and specific details take precedence over standard details.

Article 5
Bonds, Indemnity, and Insurance

5. The following section discusses bonds, indemnity and insurance requirements.

5.1. **Payment and Performance Bonds:** Within seven (7) days following issuance of the notice of award, the Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents.

5.1.1. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from the Owner, the Contractor must substitute a surety acceptable to the Owner. If the Contractor fails to substitute an acceptable surety within the specified time, the Owner may, at its sole discretion, withhold payment from the Contractor until the surety is replaced to the Owner's satisfaction, or terminate the Contract for default.

5.1.2. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

5.1.3. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.1.2, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.1.2 and 5.2.

5.2. **Indemnity:** To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, its agents and consultants, the Architect/Engineer, and the Construction Manager (individually, "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every

nature arising out of or in connection with the acts or omissions of the Contractor, its employees, Subcontractors, representatives, or agents, in performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. Pursuant to Public Contract Code Section 9201, Owner shall timely notify Contractor upon receipt of any third-party claim relating to the Contract.

5.3. Insurance: Within seven (7) days after being notified of the award of contract, and before execution of the Contract by the Owner, the Contractor shall, at its sole cost and expense, obtain and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of the Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract, and until the expiration of the warranty period following Final Completion and Final Acceptance thereof by the Owner. Every policy shall be endorsed to state that it shall not be assigned, cancelled, or reduced in coverage without thirty (30) days prior written notice to the Owner. Every policy shall also be endorsed to state that the Owner shall be given written notice of nonrenewal at least thirty (30) days prior to the nonrenewal date. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplemental Conditions. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better. If the Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, the Owner may, at its sole discretion, purchase such coverage at the Contractor's expense and deduct the cost from payments due to the Contractor, or terminate the Contract for default.

5.3.1. The Contractor shall deliver to the Owner certificates of insurance (and other evidence of insurance requested by the Owner) which the Contractor is required to purchase and maintain.

5.3.2. The following insurance policies and limits are required for this Contract unless otherwise specified in the Supplemental Conditions:

5.3.2.1. Commercial General Liability Insurance ("CGL"): The Contractor shall maintain a Commercial General Liability insurance policy insuring the Contractor for an amount not less than that specified in the Town's Insurance and Liability Requirements per occurrence, including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall

apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit. The coverage shall be at least as broad as Insurance Services Office (ISO) Form CG 00 01.

5.3.2.2. **Automobile Liability:** The Contractor shall maintain an Automobile Liability insurance policy insuring the Contractor for an amount not less than that specified in the Town's Insurance and Liability Requirements per accident for bodily injury and property damage. The coverage shall be at least as broad as Insurance Services Office (ISO) Form Number CA 0001 covering Code 1 (any auto).

5.3.2.3. **Builder's Risk Insurance:** Builder's Risk Insurance policy shall be issued on occurrence basis, for all-risk coverage on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of Owner.

5.3.2.4. **Workers' Compensation Insurance and Employer's Liability:** The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act, with at least one million dollars (\$1,000,000.00). If the Contractor is self-insured, Contractor shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

5.3.2.5. The CGL and Automobile Liability policies are to contain or be endorsed to name The Town of Moraga, its elected and appointed officers, contractors, consultants, employees, agents and volunteers are hereby added as additional insureds, but only as respect to the work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. If provided in the form of an endorsement, the CGL coverage shall be at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms.

5.3.3. **Waiver of Subrogation:** The Contractor hereby agrees to waive rights of subrogation which any insurer of the Contractor may acquire from the Contractor by virtue of the payment of any loss. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Town for all work performed by the Contractor, its employees, agents, and subcontractors.

5.3.4. The CGL Policy and the Builder's Risk Policy must include the following specific endorsements:

5.3.4.1. The inclusion of more than one insured shall not operate to impair the rights of one insured against another, and the coverages afforded shall apply as though separate policies have been issued to each insured.

5.3.4.2. The insurance provided is primary and no insurance held or owned by the Owner shall be called upon to contribute to a loss.

5.3.4.3. This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

5.3.5. The Contractor shall ensure that each Subcontractor is required to maintain the same insurance policies as set forth herein, with respect to its operations (other than Builder's Risk), including those requirements related to the additional insureds and waiver of subrogation. However, the minimum policy limits for Subcontractor CGL Policies and Automobile Liability policies are specified in the Town's Insurance and Liability Requirements. For CGL coverage, subcontractors shall provide coverage at least as broad as CG 20 38 04 13.

5.3.6. Should any of the policies identified herein contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds. The insurance specified herein shall be primary to the Owner and no other insurance or self-insured retention carried or held by the Owner shall be called upon to contribute to a loss covered by insurance for the named insured.

Article 6
Contract Time

6. The following section discusses contract time.
 - 6.1. Time: Time is of the essence in the Contractor's performance and completion of the Work, and the Contractor shall diligently prosecute the Work and complete it within the Contract Time.
 - 6.1.1. The Contractor shall commence the Work within fourteen (14) calendar days following the issuance of the Notice to Proceed and shall fully complete the Work, in strict compliance with all requirements of the Contract Documents, within the Contract Time.
 - 6.1.2. The Contractor and its Subcontractors shall, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If the Owner determines that the Contractor is failing to prosecute the Work at a sufficient rate of progress, the Owner may, in its sole discretion, direct the Contractor to provide additional workers, materials, or equipment, and/or to work additional hours or days without additional cost to the Owner, in order to achieve a rate of progress satisfactory to the Owner. If the Contractor fails to comply with the Owner's directive in this regard, the Owner may, at the Contractor's expense, separately contract for additional workers, materials, or equipment or use the Owner's own forces to achieve the necessary rate of progress. Alternatively, the Owner may terminate the Contract based on the Contractor's default.
 - 6.2. Schedule. Within seven (7) calendar days following issuance of the notice of award (or within such time as may be otherwise specified in the Supplemental Conditions), the Contractor shall submit to the Construction Manager for review and approval an as-planned Project Schedule showing in detail how the Contractor plans to perform and fully complete the Work within the Contract Time. The as-planned Project Schedule must include the work of all trades required for the Work and shall be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by the Construction Manager, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.
 - 6.2.1. The Contractor shall submit an updated Project Schedule for review and approval with each Application for Payment.
 - 6.2.2. If the Construction Manager determines that the Work is more than

one week ahead or behind schedule, within seven (7) days following written notice of such determination, the Contractor must submit a revised schedule to the Owner in conformance with the above requirements for the initial as planned schedule, showing how the Contractor intends to perform and complete the Work within the Contract Time.

6.2.3. The Contractor and its Subcontractors shall perform the Work in accordance with the most current approved schedule unless otherwise directed by Owner.

6.2.4. The Contractor shall at all times maintain a copy of the most current approved schedule posted prominently in its on-site office.

6.2.5. The Owner reserves the right to direct the sequence in which the Work shall be performed or make changes in the sequence of the Work in order to facilitate the performance of work by the Owner or others, or to facilitate the Owner's use of its property. The Contract Time and/or Contract Price shall be adjusted to the extent such changes in sequence actually increase or decrease the Contractor's time or cost to perform the Work.

6.2.6. The Contractor is limited to performing the Work during working days during the Owner's normal business hours, except as expressly provided in the Supplemental Conditions, or as authorized in writing by the Owner. The Owner reserves the right to charge Contractor for additional costs incurred by the Owner due to the Contractor working on days or during hours not expressly authorized in these Contract Documents, including, but not limited to, reimbursement of costs incurred for inspection, testing, and construction management services.

6.3. Delay and Extensions of Contract Time.

6.3.1. The Contract Time may be extended if the Contractor encounters an unavoidable delay in performing the Work due to causes completely beyond the Contractor's control, and which the Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include, but are not limited to, fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or (subject to Paragraph 7.3.1.1 below) unusually severe weather.

6.3.1.1. Excusable Delay does not include Weather Days, except to the extent (if any) that the total number of Weather Days.

- 6.3.1.2. Excusable Delay does not include delay caused by the Contractor's failure to order equipment and materials sufficiently in advance of the time needed for the Work.
- 6.3.1.3. Excusable Delay does not include delay caused by the Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work.
- 6.3.1.4. Excusable Delay does not include delay caused by foreseeable conditions the Contractor could have ascertained from reasonably diligent inspection of the Worksite and/or review of the Contract Documents.
- 6.3.1.5. Excusable Delay does not include delay caused by the Contractor's financial inability to perform the Work, e.g., insufficient funds to pay its Subcontractors or suppliers.
- 6.3.1.6. Excusable Delay does not include delay caused by a vendor or subcontractors failure to construct, install, deliver or otherwise perform in a timely manner as needed to meet the Contractor's Project Schedule.
- 6.3.2. A request for an extension of time and associated delay costs must be submitted in writing to the Construction Manager within ten (10) calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time or shall be deemed waived.
 - 6.3.2.1. The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that the Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include the Contractor's plan for continued mitigation of the delay and/or its effects.
 - 6.3.2.2. The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule impacts, and cost impacts. The Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that the Contractor has made reasonable efforts to mitigate the delay and/or its schedule and costs impacts, 3) that the delay will unavoidably result in delaying the scheduled completion date, and 4) that any delay costs claimed by the Contractor were actually incurred and were

reasonable under the circumstances.

6.3.2.3. If the Contractor is granted an extension of time for Excusable Delay, recompense for delay costs shall be limited to actual, direct, reasonable, and substantiated costs, and shall not include home office overhead, or markup for overhead and profit.

6.3.2.4. Nothing in this provision is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

6.3.2.5. Any grant of an extension of time or delay costs due to an Excusable Delay shall not operate as a waiver of the Owner's right to assess liquidated damages for unexcused delay.

6.3.2.6. In the event of a dispute over entitlement to an extension of time and/or delay costs, the Contractor shall continue working pending resolution of the dispute, and must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. The Contractor's sole recourse for an unresolved dispute is to comply with the Dispute Resolution provisions set forth in Article 13, below.

6.4. Liquidated Damages. It is expressly understood that if Substantial Completion and Final Completion are not achieved within the Contract Time, the Owner will suffer damages which are difficult to determine and accurately specify. If The Contractor fails to achieve Substantial Completion or Final Completion within the Contract Time, the Owner may charge the Contractor in the amount specified in the Contract for each working day that Substantial Completion or Final Completion are delayed beyond the Contract Time, as liquidated damages and not as a penalty.

6.4.1. Liquidated damages shall not be assessed for any Excusable Delay, as set forth above.

6.4.2. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on Contract Time and Final Completion.

6.4.3. The Owner is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to the Contractor, including, but not limited to, setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, Owner is entitled to recover the balance from the Contractor or its performance bond surety.

6.4.4. Occupancy or use of the Project in whole or in part prior to Project

Completion shall not operate as a waiver of Owner's right to assess liquidated damages for the Contractor's delay in achieving Final Completion.

6.5. **LIMITATION OF LIABILITY.** OWNER, AND EACH OF ITS OFFICERS, DIRECTORS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, WITHOUT LIMITATION, OWNER'S PROJECT MANAGER AND EACH OTHER OWNER REPRESENTATIVE, SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

Article 7

Contract Modification

7. The following section describes some means by which the contract may be modified.
- 7.1. Changes in Work. The Owner reserves the right to make changes in the Work without invalidating the Contract. The Owner may direct or the Contractor may request changes in the Work, and any such changes shall be formalized in a written Change Order signed by an authorized signatory of the Owner, which may include commensurate changes in the Contract Price and/or Contract Time as applicable. The Contractor must promptly comply with Owner-directed changes in the Work in accordance with the intent of the original Contract Documents, even if the Contractor and the Owner have not yet reached agreement as to adjustments to the Contract Price and/or Contract Time.
 - 7.1.1. In the event of a dispute over entitlement to a change in Contract Time and/or a change in Contract Price related to an Owner-directed change, the Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.
 - 7.1.2. In the event that the Owner and the Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.
 - 7.1.3. The Contractor's failure to promptly comply with an Owner-directed change shall be deemed a material breach of the Contract, and in addition to all other remedies available to it, Owner may, at its sole discretion, hire another contractor and/or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct such cost from the Contract Price.
 - 7.1.4. The Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 13, below.
 - 7.1.5. The Contractor and the Owner may agree upon minor changes to Work that do not require an adjustment in compensation. In these events a non-compensable change order may be issued to document

these changes.

- 7.2. Change Proposal Request. When the Owner requests the Contractor to present a proposal to accomplish a change in the Work, the request will be made in the form of a Change Proposal Request (CPR) prepared by the Construction Manager. The CPR will describe the change and request the Contractor to propose a cost and Contract Price and/or Contract Time change. The Contractor will propose cost and/or time changes, if any, sign the CPR and return it to Construction Manager. If requested by the Owner or Construction Manager, the Contractor shall provide an itemized breakdown of the cost of the change. The Construction Manager will make recommendations to Owner concerning acceptance. If the CPR is approved by the Owner, the CPR will be included in a Change Order. The Contractor is not authorized to proceed with a change contained in a CPR until the Change Order is properly signed and issued in conformance with the Owner's purchasing policies.
- 7.3. Work Change Directive. The Owner may issue a Work Change Directive as an order to perform additional work that is deemed necessary if the Owner and the Contractor cannot agree upon a cost or schedule for proposed additional work or when they agree that delays could cause damage such that work must proceed immediately. Work change directives are valid if signed by a signatory approved by the Owner. The Owner's authorized signatory may authorize a work change directive for work on a Not-to-Exceed basis, where the Architect/Engineer's estimate for probable cost for said work is within the signatory's authority and threshold in conformance of the Town's purchasing policies. Upon issuance of a valid Work Change Directive, the Contractor shall proceed with work. A Work Change Directive shall be followed by a valid change order for an agreed upon or force account adjustment to Contract payment or schedule for the additional work. If the Owner and the Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Time, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor.
- 7.4. Force Account.

- 7.4.1. Work paid for by force account may be authorized by the Owner under a valid Work Change Directive. For work paid by force account, the Construction Manager compares the Owner's records to the Contractor's daily force-account work report. When the Contractor and the Owner agree on the contents of the daily force- account work reports, the Owner accepts the report and the Owner pays for the work. If the records differ, the Owner pays for the work based only on the information shown on the Owner's records. If a subcontractor performs work at force account, the markups specified for labor, materials, and

equipment include compensation for all delay costs, overhead costs, and profit. If an item's unit price is adjusted for work-character changes, the Owner excludes the Contractor's cost of determining the adjustment. Payment for owner-operated labor and equipment is made at the market-priced invoice submitted.

7.4.2. If the Owner chooses to pay for change order work based on an agreed price, but the Contractor and the Owner cannot agree on the price, the Owner may choose to pay by force account. If a portion of extra work is covered by bid items, the Owner pays for this work as changed quantities in those items. The Owner pays for the remaining portion of the extra work by force account or agreed price.

7.4.3. Force account work shall conform to this Agreement, including the articles of these General Conditions. In cases where this Agreement does not specify applicable requirements, terms or conditions, force account work shall conform to those applicable requirements as set forth in Section 9-1.04 of the Caltrans Standard Specifications.

7.5. **Change Order Requests.** The Contractor must submit to the Construction Manager a request for a change in the Work and/or a change in the Contract Price or Contract Time as a written Change Order request. Any Change Order request submitted by the Contractor shall include a complete breakdown of actual cost, and credits, and shall itemize labor, materials, taxes, insurance, and subcontract amounts. All subcontract amounts shall include itemized labor, materials, taxes, and insurance. All claimed costs must be fully documented.

7.5.1. All Change Order requests must be signed by the Contractor and shall include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein shall be deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq."

7.6. **Unauthorized Changes in the Work.** The Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented.

7.7. **Adjustments to Contract Price.** Any increase or decrease to the Contract

Price shall be determined based on one of the following methods:

7.7.1. Amounts previously provided in the form of unit prices, the schedule of values, or Allowances, shall apply first if applicable; or

7.7.2. A mutually agreed upon lump sum; or

7.7.3. On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

7.7.3.1. All direct labor costs plus fifteen percent (15%) for overhead and profit;

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

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

7.7.3.4. All direct subcontract costs plus ten percent (10%) for overhead and profit.

7.7.4. By Force Account as described in Section 7.4 above.

7.8. Execution of Change Orders. It is at the sole discretion of the Town Council, or a delegate explicitly authorized by Town Council, to execute Change Orders. The Owner and the Construction Manager will review all change orders, and, if the changes are deemed reasonable and appropriate by the Owner, the Owner will proceed to execute the appropriate change orders accordingly. Change orders recommended by the Construction Manager to the Owner shall consist of:

7.8.1. Changes in the Work which are: (i) ordered by the Owner pursuant to Paragraph 7.2 above, (ii) Owner's correction of defective Work, or (iii) agreed to by the parties;

7.8.2. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

7.8.3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by the Construction Manager, or by the Architect/Engineer through the Construction Manager; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, the Contractor shall carry on

the Work and adhere to the Progress and Project Schedules.

Article 8

General Construction Provisions

8. The following section discusses the general construction provisions.

8.1. Permits and Taxes.

8.1.1. The Contractor shall obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. The Contractor shall cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. The Contractor shall provide the Owner with copies of all notices, permits, licenses, and renewals required for the Work.

8.1.2. The Contractor shall pay for all taxes on material and equipment, except Federal Excise Tax to the extent that the Owner is exempt from Federal Excise Tax.

8.2. **Temporary Facilities.** The Contractor shall provide, at the Contractor's sole expense, any and all temporary facilities, including, but not limited to onsite office, sanitary facilities, storage, scaffolds, temporary traffic control devices, barricades, walkways, and any other temporary structure required to perform the Work along and any utility services incidental thereto. Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations. The Contractor shall promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. The Contractor shall promptly repair any damage to the Owner's property caused by the installation, use, or removal of the temporary facilities, and shall promptly restore the property to its original or intended condition. Additional provisions pertaining to temporary facilities may be included in the Specifications or Supplemental Conditions.

8.3. **Signs.** No signs may be displayed on or about the Owner's property, except signage which is required by law, without the Owner's prior written approval as to content, size, design, and location.

8.4. Protection of Work and Property.

8.4.1. The Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by the Owner, the Contractor shall confine its operations to the area of the Project site indicated in the drawings. The Contractor is liable for any damage caused to the Owner's real or

personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for the Owner.

8.4.2. If the Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the drawings or apparent from inspection of the Project site, the Contractor shall promptly notify the Construction Manager, who will notify the Owner and the Architect/Engineer. The Contractor shall avoid taking any action which could cause damage to such facilities or utilities pending further direction from the Construction Manager upon receiving direction from the Architect/Engineer and the Owner. If the Construction Manager's subsequent direction to the Contractor affects the Contractor's cost or time to perform the Work, the Contractor may submit a Change Order request as set forth herein.

8.4.3. The Contractor shall provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to the Owner's property and adjacent properties and improvements thereon. The Contractor shall provide notifications to adjacent property owners as may be required by law.

8.4.4. The Contractor shall be required to repair or replace, at the Contractor's sole expense, any property damage caused by its acts or omissions in performing the Work. Any such repair or replacement must be performed expeditiously. Any such repairs or replacements should be performed to restore the damaged area to its previous condition, including, but not limited to, use of the same type of materials, the same finishes, and the same dimensions, so that the repairs or replacements match the appearance of the existing facilities as closely as possible.

8.5. **Noninterference.** The Contractor shall take reasonable measures to avoid interfering with the Owner's use of its property at or adjacent to the Project site, including, but not limited to, use of roadways, entrances, parking areas, walkways, and structures.

8.6. **Materials and Equipment.**

8.6.1. Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work shall be deemed to include all components required for complete installation and intended operation, and shall be installed in accordance with the manufacturer's recommendation. The Contractor is responsible for all shipping,

handling, and storage costs associated with the materials and equipment required for the Work.

8.6.2. If the Work includes installation of materials or equipment to be provided by the Owner, the Contractor shall be responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor shall promptly notify Owner of any defects discovered in Owner-provided materials or equipment. Contractor shall be responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

8.7. Substitutions.

8.7.1. Except as noted in the Notice to Bidders or Instructions to Bidders, any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate function, appearance, quality and type of item desired, and the Contractor may request use of any equal material, product, thing, or service.

8.7.2. As a limitation on the Contractor's right to request "or equal" substitutions, the Owner has found that certain items are designated as Owner standards and certain items are designated to match existing items in use on a particular public improvement either completed or in the course of completion or are available from one source. As to such items, the Owner will not permit substitution. Such items (if any) are described in the Notice Inviting Bids.

8.7.3. A request for substitution must be submitted to the Construction Manager for routing to the Architect/Engineer for approval within the time period provided in the Specifications. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, at least 21 days prior, whichever is earlier.

8.7.4. All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution using the form provided in these Contract Documents. The Contractor has the burden of proving the equality of the proposed substitution. The Contractor's failure to timely provide necessary submittals does not establish grounds for substitution.

8.7.5. If the proposed substitution is approved, the Contractor is solely responsible for any additional costs associated with the substituted

item(s). If the proposed substitution is rejected, the Contractor shall, without delay, install the item specified.

8.7.6. The Construction Manager's or Architect/Engineer's review of a proposed substitution shall not relieve the Contractor from any of its obligations under the Contract Documents. In the event the Contractor makes an unauthorized substitution, the Contractor shall be solely responsible for all cost impacts resulting therefrom, including, but not limited to, the cost of removal and replacement and the impact to other design elements.

8.8. Testing and Inspection. Contractor shall give Construction Manager timely notice of readiness of the Work in accordance with the Contract Documents for all required inspections, samplings, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

8.8.1. The Contractor shall schedule all inspections, samplings and tests required by the Contract Documents in time to avoid any delay to the progress of the Work, at least 48 hours prior to commencement of Work. Contractor shall provide timely notice to all necessary parties as specified in the Contract Documents. The Contractor shall bear the cost of all testing and certification relating to the Contractor's construction quality control, and the Owner may upon request observe said quality control testing or receive copies of certificates. The Owner shall bear the initial cost of testing for the purposes of the Owner's quality assurance to be performed by independent testing consultants retained by the Owner. However, the Contractor shall be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs. In addition, if any portion of the Work which is subject to testing is covered or concealed by the Contractor prior to testing, the Contractor shall bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

8.8.2. The Owner may employ and pay for the services of an independent testing laboratory to perform Quality Assurance inspections, tests, or approvals on behalf of the Owner.

8.8.3. All materials, equipment, and workmanship used in the Work shall be subject to inspection by the Owner, Construction Manager or Architect/Engineer at all times and locations during construction and/or fabrication. All manufacturers' application or installation instructions shall be provided to the Inspector at least ten (10) days prior to the first such application. The Contractor shall, at all times, make the Work available for inspection. Any Work that fails to comply with the

requirements of the Contract Documents shall be promptly repaired, replaced, or corrected by the Contractor, at the Contractor's sole expense. In addition, if any portion of the Work is improperly covered or concealed by the Contractor prior to inspection, the Contractor shall bear the cost of making that portion of the Work available for inspection, and any associated repair or remediation costs.

8.8.4. The Construction Manager will also have authority to require special inspection or testing of the Work, whether or not the Work is being fabricated, installed, or is completed.

8.8.5. The Owner, Construction Manager, Architect/Engineer, their consultants and other representatives and personnel of the Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. The Contractor shall provide them proper and safe conditions for such access and advise them of the Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

8.8.6. The Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the Owner's and the Construction Manager's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to the Owner and Construction Manager.

8.8.7. If the Construction Manager or Architect/Engineer determines it necessary that any Work (or part thereof) specifically be inspected, tested, or approved by an employee or other representative of the Owner or a public regulatory agency, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the Construction Manager (and Architect/Engineer) the required certificates of inspection for approval.

8.8.8. If required off-site testing and/or inspection must be conducted at a location more than one hundred (100) miles from the Project site, the Contractor shall be responsible for the additional travel costs required for testing and/or inspection at such locations.

8.8.9. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by the Contractor without written concurrence of Construction Manager, it must, if requested by the Construction Manager, be uncovered for observation, inspection, sampling or

testing.

8.8.10. The Contractor shall be solely responsible for any delay occasioned by correction or remediation of noncompliant Work.

8.9. Uncovering Work.

8.9.1. If any Work is covered prior to the specified inspection, sampling, testing or approvals required in the Contract Documents or contrary to the written request of the Construction Manager, it must, if requested by Construction Manager, be uncovered for the Construction Manager's observation, inspection, sampling or testing, and replaced at the Contractor's expense.

8.9.2. If the Construction Manager considers it necessary or advisable that covered Work be observed by the Construction Manager or inspected or tested by others, the Contractor, at the Construction Manager's request, shall uncover, expose, or otherwise make available for observation, inspection, sampling or testing as the Construction Manager may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

8.9.3. If it is found that the uncovered Work is defective, the Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, sampling, testing, and satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others).

8.10. Clean up. The Contractor shall regularly remove debris and waste materials and maintain the work areas in clean and neat condition. The Contractor shall maintain and regularly clean all Stormwater BMPs, and comply with Contra Costa County and the Town or Moraga stormwater and dust control requirements. The Contractor shall, at all times, minimize and confine dust and debris resulting from construction activities. Prior to discontinuing work in an area, the Contractor shall clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials.

8.11. Upon completion of the Contractor's work activities but prior to demobilizing and achieving a determination of Final Completion:

8.11.1. the Contractor shall ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed

Work and the surrounding areas.

- 8.11.2. the Contractor shall remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris.
- 8.11.3. the Contractor shall remove all temporary stormwater and dust control BMPs, and stabilize the site.
- 8.11.4. If the Contractor fails to commence compliance with its cleanup obligations within two (2) working days following written notification from Owner or its representative, Owner may undertake appropriate cleanup measures without further notice and the cost of such shall be deducted from any amounts due or to become due the Contractor in the next payment period.

- 8.12. Instructions and Manuals. The Contractor shall provide three (3) hard-bound copies and one electronic (.pdf format) copy each of all instructions and manuals required by the Contract Documents. These shall be complete as to drawings, details, parts lists, performance data, and other information that may be required for the Owner to easily maintain and service the materials and equipment installed pursuant to this Contract. All manufacturers' application or installation instructions shall be provided to the Inspector at least ten working (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, shall be delivered to the Construction Manager for routing to the Architect/Engineer for review. The Contractor and/or its Subcontractors shall instruct the Owner's personnel in the operation and maintenance of any complex equipment prior to Final Acceptance of the Work, as may be required in the Contract Documents.
- 8.13. As-built Drawings. The Contractor and its Subcontractors shall maintain on the Worksite a separate complete set of Contract drawings which shall be used solely for the purpose of recording changes made in any portion of the Work in order to create as-built drawings. The as-built drawings shall be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until such time as the as-built drawings are brought up to date to the satisfaction of the Construction Manager and Architect/Engineer. Actual locations to scale shall be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original drawings shall be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., shall be shown by dimension and elevation. Contractor shall verify that all changes in the Work are depicted in the as-built drawings and shall deliver the complete set of as-built drawings to the Construction Manager for review and routing to the Architect/Engineer for review and approval as the condition precedent to

acceptance of the Work.

- 8.14. Existing Utilities. Pursuant to Government Code Section 4215, if, during the performance of the Work, the Contractor discovers utility facilities not identified by the Architect/Engineer in the Contract Documents, the Contractor shall immediately provide written notice to the Owner and the utility. The Owner assumes 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 identified in the Contract Documents. The Contractor shall be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans or 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 Work, to the extent such delay was caused by the Owner's failure to provide for removal or relocation of such utility facilities.
- 8.15. Notice of Excavation. Pursuant to Government Code Section 4216.2, except in an emergency, the Contractor shall contact the appropriate regional notification center, at least two (2) working days, but not more than fourteen (14) calendar days prior to commencing any excavation if the excavation will be conducted in an area that is known, or reasonable should be known, to contain subsurface installations, and if practical, Contractor shall delineate with white paint or other suitable markings the area to be excavated.
- 8.16. Trenching and Excavations.
 - 8.16.1. All Work shall comply with all applicable Construction Safety Orders (8CCR 1500, et Seq.) and rules and regulations issued by the California Department of Industrial Relations.
 - 8.16.2. The Contractor shall promptly, and before the following conditions are disturbed, provide written notice to the Owner if the Contractor finds any of the following conditions:
 - 8.16.2.1. Material that the Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.
 - 8.16.2.2. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

8.16.2.3. Unknown physical conditions at the site of any unusual nature, differing materially different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

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

8.16.4. In the event that a dispute arises between the Owner and the Contractor regarding any of the matters specified in subsection 7.14.1, above, the Contractor shall not be excused from any schedule completion date provided for in the Contract Documents, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between the Contractor and the Owner.

8.17. Trenching of Five Feet or More. Pursuant to Labor Code Section 6705, if the Contract Price exceeds twenty-five thousand dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five feet (5') or more in depth, a detailed plan must be submitted to the Construction Manager, the Owner and/or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If such plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

8.18. Contractor to Maintain Cost Data.

8.18.1. The Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to the Contractor of each class of materials, tools and appliances used by the Contractor in Work, and the amount of each class of materials used in each subdivision of Work. The Contractor shall provide the Owner with monthly summaries of this information. If the Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Bid estimates or budgets, the Contractor shall provide the Owner with a copy of such report upon the Owner's request.

8.18.2. The Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. The Contractor shall provide the Owner with copies for each working Day the Contractor works on the Project, to be delivered to the Owner either the same Day or the following morning before starting work at the Site. The Contractor shall take pre-construction and monthly progress photographs of all areas of the Work. The Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.

8.18.3. The Owner, or any Agency or organization providing grant funding toward the construction of the Project, shall have the right to audit and copy the Contractor's books and records of any type, nature or description relating to the Project (including, without limitation, financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including the Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, the Owner shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by the Contractor. The Owner and any other applicable governmental entity shall have the right to inspect all information and documents maintained hereunder at any time during the Project and for a period of five years following Final Completion, in accordance with the provisions of Government Code Section 8546.7. This right of inspection shall not relieve the Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

Article 9 Payment

9. The following section discusses compensation and payment.

9.1. Schedule of Values. See Paragraphs 2.6.1.3 and 2.8.3.

9.2. Unit Prices.

9.2.1. Progress payments on account of Unit Price Work will be based on the number of units completed.

9.2.2. The Construction Manager will determine the actual quantities and classifications of Unit Price Work performed by the Contractor. The Construction Manager will review with the Contractor the Architect/Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

9.3. Progress Payments. Following the last day of each month, or as otherwise required by the Supplemental Conditions or Specifications, the Contractor shall submit to the Owner and the Construction Manager for approval, a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

9.3.1. Each application for payment shall be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application shall be supported by the Contractor's Schedule of Values and any other substantiating data required by the Contract Documents.

9.3.2. The Construction Manager will review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If the application is deemed acceptable by the Construction Manager, the Construction Manager will forward and recommend payment by the Owner.

9.3.3. The Owner shall pay the undisputed amount due, as certified by the Construction Manager, within thirty (30) days after the Contractor has submitted a complete, accurate certified payment application, subject to Public Contract Code Section 20104.50. Owner shall deduct a percentage from each progress payment as retention, as set forth in subsection 8.5, below, and may deduct additional amounts as set forth

in subsection 8.3, below.

9.4. Adjustment of Payment Application. The Owner may adjust or reject a payment application, including application for Final Payment, in whole or in part, as may be necessary to protect the Owner from loss or damage based upon the following:

- 9.4.1. The Contractor's unexcused failure to perform the Work as required by the Contract Documents, including, but not limited to, correction or completion of punch list items;
- 9.4.2. Loss or damage caused by the Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;
- 9.4.3. The Contractor's failure to pay its Subcontractors and suppliers when payment is due;
- 9.4.4. Failure to timely correct rejected, nonconforming, or defective Work.
- 9.4.5. Unexcused delay in performance of the Work;
- 9.4.6. Any unreleased stop notices, retained as 125% of the amount claimed;
- 9.4.7. Any other costs or charges that may be offset against payments due, as provided in the Contract Documents; and
- 9.4.8. Contract payments shall not be made when payroll records are delinquent or inadequate.

If a payment application is adjusted based on one of the foregoing, the Contractor shall be notified in writing of the basis for the adjustment and shall be promptly paid once the basis for that adjustment has been remedied and no longer exists.

9.5. Acceptance of Work. Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work. Final Acceptance of all Work as complete shall be at the sole discretion of the Town Council of the Town of Moraga.

9.6. Rejecting Defective Work.

- 9.6.1. The Construction Manager will have authority to reject Work which the Construction Manager or the Architect/Engineer believes to be defective, or that the Construction Manager or Architect/Engineer believes will not produce a completed Project that conforms to the

Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

9.6.2. The acceptance at any time of materials or equipment by or on behalf of the Owner shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality, or not equal to the material or equipment specified, or are not as represented to the Construction Manager, Architect/Engineer or Owner.

9.7. Retention. The Owner shall retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and complete performance of the Work.

9.7.1. Pursuant to and in accordance with Public Contract Code Section 22300, the Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by the Owner. Any escrow agreement entered into pursuant to this provision shall fully comply with Public Contract Code Section 22300 and shall be subject to approval as to form by the Owner's legal counsel.

9.7.2. All undisputed retention, less any amounts that may be assessed for incomplete, defective, and/or non-conforming Work, less any amounts that may be assessed as liquidated damages, and less amounts retained pursuant to stop notices, shall be released to the Contractor no sooner than forty-five (45) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by the Owner's governing body, or, if the Project has not been accepted, no later than sixty (60) days following such time that the Project is otherwise considered complete pursuant to Public Contract Code Section 7107(c).

9.8. Setoff. The Owner is entitled to setoff any amounts due from the Contractor against any payments due to Contractor. The Owner's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

9.9. Payment to Subcontractors and Suppliers. Each month, the Contractor shall promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments shall be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

9.9.1. The Owner shall withhold 150% of the amount claimed by an

unreleased stop notice pursuant to Public Contract Code Section 7201(a), a portion of which may be retained by the Owner for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

9.9.2. The Owner reserves the right to issue joint checks made payable to the Contractor and its Subcontractors and/or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the Owner. The joint check payees shall be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check shall not be construed to create a contractual relationship between the Owner and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

9.10. Final Payment.

9.10.1. Application for Final Payment

9.10.1.1. After Contractor has, in the opinion of Construction Manager, satisfactorily completed all corrections identified during the final inspection (as described in Paragraph 12.2) and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

9.10.1.2. The final Application for Payment shall be submitted at least two weeks prior to Final Acceptance by the City Council, and accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required;
- b. consent of the surety, if any, to final payment;
- c. Executed and completed Agreement and Release of Any and all Claims, including the list of all Claims against Owner (if any) that Contractor believes are unsettled;
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work;

- e. Affidavit of Contractor " certifying that all releases and receipts including all labor, services, materials and equipment for which a lien could be filed, and that payrolls, materials and equipment bills, and other indebtedness connected with the work, for which the Owner's property could be attached or otherwise encumbered, have been fully paid and discharged";
- f. Any property owner's releases certifying that the property was restored to the satisfaction of any property owner on which work or related activities were performed; and
- g. All warranties and guarantees.

9.10.1.3. In lieu of the releases or waivers of Liens as approved by the Owner, the Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any Lien.

9.10.2. Construction Manager's Review of Application and Acceptance.

9.10.3. If, on the basis of the Construction Manager's observation of the Work during construction and final inspection, and the Construction Manager's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the Construction Manager is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the Construction Manager will, within ten (10) working days after receipt of the final Application for Payment, indicate in writing the Construction Manager's recommendation of payment and present the Application for Payment to the Owner for payment. At the same time the Construction Manager will also give written notice to the Owner and the Contractor that the Work is acceptable subject to the Owner's Final Acceptance. Otherwise, the Construction Manager will return the Application for Payment to the Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application for Payment.

9.10.4. Neither the Construction Manager's review of the Contractor's

Work for the purposes of recommending payments nor the Construction Manager's recommendation of any payment, including final payment, will impose responsibility on the Construction Manager:

- a. to supervise, direct, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for the Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes the Contractor has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to the Owner free and clear of any Liens.

9.10.5. The Construction Manager may refuse to recommend the whole or any part of any payment if, in the Construction Manager's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 9.9.4. The Construction Manager may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in the Construction Manager's opinion to protect the Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. The Owner has been required to correct defective Work or complete Work; or
- d. The Construction Manager has actual knowledge of the occurrence of any of the events that may justify termination for cause by the Owner.

9.10.6. Corrections due from Previous Progress payment. Corrections to previous progress payments may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that the Owner acts to release retention as final payment to the Contractor,

or otherwise provides written notice to the Contractor of Final Payment. If the amount due from the Contractor to the Owner exceeds the amount of Final Payment, the Owner retains the right to recover the balance from the Contractor or its sureties.

- 9.11. **Release of Claims.** The Owner may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon the Contractor furnishing the Owner with a written release of all claims against the Owner arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from such release.
- 9.12. **Warranty of Title.** The Contractor warrants that title to all work, materials, or equipment incorporated into the Work included in a request for payment shall pass over to the Owner free of any claims, liens, or encumbrances upon payment to the Contractor.

Article 10

Labor Provisions

10. The following section discusses labor provisions.

10.1. Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. The Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, Government Code Sections 12900 et seq., Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

10.2. Labor Code Requirements.

10.2.1. Pursuant to Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work under this Contract.

10.2.2. Pursuant to Labor Code Section 1813, Contractor shall forfeit to the Owner as a penalty, the sum of twenty-five dollars (\$25.00) for working each day during which a worker employed by the Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime pursuant to Labor Code Section 1815.

10.2.3. The Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is incorporated by reference herein.

10.3. Prevailing Wages. Each worker performing Work under this Contract shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. The Contractor shall post a copy of the applicable prevailing rates at the Worksite.

10.3.1. Pursuant to Labor Code Section 1775, the Contractor and any Subcontractor shall forfeit to the Owner as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. The Contractor shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

10.4. Payroll Records. The Contractor shall comply with the provisions of Labor Code Sections 1776 and 1812, which are incorporated by reference herein.

10.4.1. The Contractor and each Subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

10.4.1.1. The information contained in the payroll record is true and correct.

10.4.1.2. The Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

10.4.2. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request, to the Owner, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

10.4.3. Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor shall have ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor shall forfeit a penalty of one hundred dollars (\$100.00) per day, or portion thereof, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

10.5. Compliance Monitoring. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (California Labor Code Section 1771.4).

10.5.1. Pursuant to California Labor Code Section 1771.4, the contractor and its subcontractor(s) shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner: (a) at least monthly or more frequently if specified in the contract with the awarding body; and (b) in a format prescribed by the Labor

Commissioner.

10.5.2. The contractor shall post job site notices, as prescribed by regulation (California Labor Code Section 1771.4).

Article 11 Safety Provisions

11. The following section discusses some safety provisions.

11.1. Safety Precautions and Programs. Contractor and its Subcontractors shall be fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors shall comply with all applicable laws and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

11.1.1. The Contractor shall immediately provide a written report to the Owner of all recordable accidents and injuries occurring at the Worksite. If the Contractor is required to file an accident report with a government agency, the Contractor shall provide a copy of the report to the Owner.

11.1.2. The Contractor's safety program shall comply with the applicable legal and regulatory requirements. The Contractor shall provide the Owner with copies of all notices required by law or regulation.

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

11.1.4. Any damage or loss caused by the Contractor arising from the Work which is not insured under property insurance shall be promptly remedied by the Contractor.

11.1.5. The Contractor, as a part of its safety program, shall maintain at its office or other well-known place at the Site, safety equipment applicable to the Work as prescribed by the aforementioned authorities, all items necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons who may be injured on the jobsite.

11.1.6. If the Owner, Construction Manager, or Architect/Engineer determines, in its sole discretion, that any part of the Work or Worksite is unsafe, the Owner Construction Manager, or Architect/Engineer may, without assuming responsibility for the Contractor's safety program, require the Contractor or its Subcontractor to cease performance of the Work and/or to take corrective measures to the Owner's satisfaction. If the Contractor fails to promptly take the required corrective measures, the Owner may perform them and deduct the cost from the Contract Price. The Contractor agrees it shall not be entitled to a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on the Contractor's compliance with the Owner's request

for corrective measures pursuant to this provision.

11.2. Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If the Contractor encounters materials on the Worksite that the Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, the Contractor may continue Work in unaffected areas reasonably believed to be safe, but shall immediately cease work on the area affected and report the condition to the Owner and Architect/Engineer. No asbestos, asbestos-containing products or other Hazardous Materials shall be used in performance of the Work.

11.3. Material Safety. The Contractor shall maintain Safety Data Sheets ("SDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The SDS shall be accessible and available to the Contractor's employees, Subcontractors, the Owner, and the Owner's representatives.

11.3.1. The Contractor shall be responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

11.3.2. The Contractor shall ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

11.4. Trenching and Shoring Safety. In accordance with the provisions of Section 6705 of the Labor Code, the Contractor shall submit, in advance of excavation 5 feet or more in depth, detailed plans showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from hazard of caving ground during such excavation. If such plans vary from the shoring system standards set forth in the Construction Safety Orders in Title 8, California Code of Regulations, the plans shall be prepared and signed by a registered civil or structural engineer. Shoring, bracing, sloping, or other protective system shall not be less effective than required by the California Construction Safety orders. The Contractor shall designate in writing to the Construction Manager the "competent person" with the authority and responsibilities designated in the Construction Safety Orders.

11.5. Reporting Injury or Death. If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Construction Manager and the Owner. In addition, the Contractor must promptly report in writing to the Construction Manager all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to, the Site, giving full details and statements of witnesses. The Contractor shall make all reports as are, or may be, required by any authority having jurisdiction, and permit all safety inspections of the work

being performed under this Contract.

11.6. **Emergencies.** In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor is obligated to act to prevent threatened damage, injury, or loss. The Contractor shall give the Construction Manager prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If the Construction Manager, in collaboration with the Owner and the Architect/Engineer, determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

11.7. **Traffic and Publicly Accessible Facilities.** In some locations it may be necessary for the Contractor to maintain accessibility for public traffic, whether vehicular, non-vehicular or pedestrian. The Contractor shall be responsible for implementing safe traffic control measures to protect the safety or the public and the workers, and to minimize adverse construction impacts to public access or traffic throughput. Prior to implementing any traffic control or access measures, the Contractor shall develop traffic control plans or any other public access plans and submitting to the Construction Manager. Traffic Control Plans or public access plans shall be developed in conformance with the Contract Documents, and shall be submitted to the Construction Manager for routing for review and approval. Unless otherwise specified in the Contract Documents, Traffic Control Plans shall conform to the current California Manual of Traffic control Devices (CA-MUTCD) and be prepared and stamped by a California licensed Traffic or Civil Engineer.

Article 12

Completion and Warranty Provisions

12. The following section discusses completion and warranty provisions.

12.1. Substantial Completion.

12.1.1. When the Contractor considers the entire Work ready for its intended use the Contractor shall notify the Owner and the Construction Manager in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that the Construction Manager issue a certificate of Substantial Completion.

12.1.2. Promptly after the Contractor's notification, the Owner, the Contractor, Architect/Engineer and the Construction Manager shall make an inspection of the Work to determine the status of completion. If the Construction Manager does not consider the Work substantially complete, the Construction Manager will notify the Contractor in writing giving the reasons therefor.

12.1.3. If the Construction Manager considers the Work substantially complete, the Construction Manager will deliver to the Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The Owner shall have seven (7) days after receipt of the tentative certificate during which to make written objection to the Construction Manager as to any provisions of the certificate or attached list. If, after considering such objections, the Construction Manager concludes that the Work is not substantially complete, the Construction Manager will within fourteen (14) days after submission of the tentative certificate to the Owner notify the Contractor in writing, stating the reasons therefor. If, after consideration of the Owner's objections, the Construction Manager considers the Work substantially complete, the Construction Manager will within fourteen (14) days execute and deliver to the Owner and the Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Construction Manager believes justified after consideration of any objections from Owner.

12.1.4. The Construction Manager shall promptly deliver the Punchlist to the Contractor and specify the time by which all the punchlist items must be completed or corrected. The Contractor will promptly begin correcting all the items enumerated on the punchlist to achieve Final Completion in a timely manner.

12.1.5. The Owner shall have the right to exclude the Contractor from the Site after the date of Substantial Completion subject to allowing the Contractor reasonable access to complete or correct items on the tentative list.

12.2. Final Completion.

12.2.1. When the Work required by this Contract is fully performed, the Contractor shall provide written notification to Construction Manager requesting final inspection. Based on this inspection, Architect/Engineer shall prepare a punch list of items that are incomplete, incorrectly installed, are not operating as required by the Contract Documents, or defective. The omission of any such item from this punch list shall not relieve the Contractor from fulfilling all requirements of the Contract Documents. The Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

12.2.2. Final Completion will be achieved upon completion or correction of all punchlist items, as verified by inspection, and upon satisfaction of all other Contract Documents requirements, including, but not limited to, all final submittals, to Owner's satisfaction.

12.2.3. Once Final Completion is achieved, and the Project has been formally accepted by Owner, Owner shall file a notice of completion with the County Recorder. Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, shall not be made sooner than Forty (40) days after recordation of the notice of completion.

12.3. Warranty.

12.3.1. The Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. At Owner's request, Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

12.3.2. The Contractor's warranty shall guarantee its work for a period of one (1) year from the date of recordation of the notice of completion, except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications. Contractor shall obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents. As a condition precedent to acceptance, Contractor shall supply Owner with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers. The warranty provided herein applies to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.

12.3.3. Upon written notice from the Owner to the Contractor of any defect in the Work discovered during the warranty period, the Contractor and/or its responsible Subcontractor shall promptly correct the defective Work at their own cost. The

Contractor's obligation to correct defects discovered during the warranty period shall continue past the expiration of the warranty period as to any defects in Work for which the Contractor was notified prior to expiration of the warranty period. If the Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by the Owner, or sooner, if required by the circumstances, the Contractor expressly agrees that the Owner may correct the defects to conform with Contract Documents at the Contractor's sole expense, and the Contractor agrees to reimburse the Owner for its costs within thirty (30) days following the Owner's submission of a demand for payment pursuant to this provision. If the Owner is required to initiate legal action to compel the Contractor's compliance with this provision, and the Owner is the prevailing party in such action, the Contractor shall be responsible for all of the Owner's attorney's fees and legal costs expended to enforce the Contractor's warranty obligations herein in addition to any and all costs incurred by the Owner to correct the defective Work.

12.4. **Use Prior to Final Completion.** The Owner reserves the right to occupy or make use of the Project, or any portions thereof, prior to Final Completion if the Owner has determined that the Project or portion thereof is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions thereof, prior to Final Completion. The Owner shall notify the Contractor in writing of its intent to occupy or make use of the Project or any portions thereof, pursuant to this provision. Such occupation or use shall not operate as acceptance of the Work or any portion thereof, nor shall it operate as a waiver of any of the Owner's rights or the Contractor's duties pursuant to these Contract Documents. Notwithstanding the foregoing, to the extent the Owner occupies or makes use of the Project or any portions thereof, pursuant to this provision, the Owner shall be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use pursuant to this provision actually adds to the Contractor's cost or time to perform the Work.

Article 13

Dispute Resolution

13. The following section discusses dispute resolution provisions.

13.1. **Claims.** This Article applies to any Claim arising from or related to the Contract or performance of the Work. "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following: (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the Owner under the Contract for this Project; (B) payment by the Owner of money or damages arising from work done by, or on behalf of, the claimant pursuant to the Contract for this Project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; and (C) payment of an amount that is disputed by the Owner.

13.2. **Form and Contents of Claim.**

13.2.1. The Contractor's written claim must be submitted via registered mail or certified mail with return receipt requested and must identify itself as a "Claim" under this Article 13 and must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) complete pricing of all cost impacts; (v) a time impact analysis of all time delays that shows actual time impact on the critical path; (vi) documentation supporting items (i) through (v); and (vii) a verification under penalty of perjury of the Claim's accuracy. The Claim shall be submitted to the Construction Manager and the Owner within thirty (30) calendar days of receiving the Owner's written decision, or the date the Contractor contends such decision was due, and shall be priced like a Change Order according to Paragraph 7.7, and must be updated monthly as to cost and entitlement if a continuing Claim. Routine contract materials, for example, correspondence, requests for information, change order requests, or payment requests shall not constitute a Claim. The Contractor shall bear all costs incurred in the preparation and submission of a Claim.

13.2.2. Upon receipt of a Claim, the Construction Manager and the Owner shall conduct a reasonable review of the Claim. Within 45 days, or such extended period as the Owner and the Contractor may agree, the Construction Manager or the Owner shall provide the Contractor with a written statement identifying what portion of the Claim is disputed and what portion is undisputed.

13.2.3. If the Owner's governing body must approve the Owner's response to the Claim and the governing body has not met within the 45-day (or extended) period, then the Owner shall provide its written statement within three (3) days of the governing body's meeting.

13.2.4. The Owner shall pay the undisputed portions of the Claim within 60 days of the issuance of a written statement identifying an undisputed portion.

13.2.5. Claims must be submitted on or before the day of final payment. Claims not submitted before final payment are deemed waived.

13.2.6. Notwithstanding and pending the resolution of any Claim or dispute, the Contractor shall diligently prosecute the disputed work to final completion in accordance with the Construction Manager's determination.

13.3. Informal Conference After Claim Submission.

13.3.1. If the Contractor disputes the Owner's response to its Claim, including a failure to respond, it may submit via registered mail or certified mail, return receipt requested, a written demand for an informal conference to meet and confer for settlement of the issues in dispute. The Owner shall schedule such a meet and confer conference within 30 days for settlement of the dispute.

13.3.2. Within ten (10) days of the meet and confer conference, the Owner shall provide the Contractor with a written statement identifying the portion(s) of the Claim that remain in dispute and the portion(s) that are undisputed.

13.3.3. The Owner shall pay the undisputed portions of the Claim within 60 days of the issuance of any written statement identifying an undisputed portion.

13.4. Mediation.

13.4.1. If the Contractor disputes the Owner's statement provided under Paragraph 13.3.2 it shall inform the Owner and the parties shall mutually agree to a mediator within 10 business days of the date of the written statement. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

13.4.2. Mediation shall be confidential and non-binding. Unless otherwise agreed by the parties or as provided in this Paragraph 13.4, the mediation shall be pursuant to the construction mediation procedures of JAMS and held at the JAMS office closest to the Project site.

13.4.3. The cost of mediation shall be equally shared by all parties to the mediation. The parties shall, prior to the commencement of mediation and upon notice to the other party, exchange relevant, non-privileged Project documents in compliance with Code of Civil Procedure Sections 2031.010, et seq. The parties may agree mutually to engage in additional discovery prior to mediation. Should the parties proceed with additional discovery, they shall, unless mutually agreed otherwise, comply with Code of Civil Procedure Sections 2019, et seq. The mediator will undertake to resolve any discovery disputes relating to the mediation.

13.4.4. For Claims under \$375,000, unless the parties agree otherwise in writing, mediation pursuant to this Paragraph 13.4 shall excuse the mediation obligation under Public Contract Code Section 20104.4(a), as provided in Paragraph 13.5,

below.

13.4.5. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be resolved as otherwise provided by the Contract and applicable law.

13.4.6. Following receipt of a Claim, the parties may mutually agree, in writing, to waive the mediation requirements of this Paragraph 13.4 and proceed to the commencement of a civil action.

13.4.7. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion.

13.5. Dispute Procedures for Claims Under \$375,000 (PCC §§ 20104, et seq.)

13.5.1. Public Contract Code Section 20104, et seq., specifies required provisions on resolving contract claims less than \$375,000, which are set forth below, and constitute a part of this Contract.

13.5.2. For the purposes of this section, "Claim" means a separate demand by the Contractor of \$375,000 or less for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of the Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by the Owner. In order to qualify as a Claim, the written demand must state that it is a Claim submitted under Article 14 of these General Conditions and be submitted in compliance with all requirements of Article 14 of these General Conditions. Separate Contractor Claims that together total more than \$375,000 do not qualify as a "separate demand of \$375,000 or less," as referenced above, and are not subject to this section.

13.5.3. A voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim for purposes of this section. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under this section by submitting a separate claim in compliance with Contract Documents claim submission requirements.

13.5.4. Caution. This section does not apply to tort claims, and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the Government Code.

13.5.5. Procedure.

13.5.5.1. The Claim must be in writing, submitted in compliance with all requirements of these General Conditions, Article 13 including, without limitation, the time prescribed by and including the documents necessary to substantiate the Claim, pursuant to General Conditions, Paragraph 13.2.

Claims must be filed on or before the day of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements for the filing of claims as set forth in these General Conditions, Article 13 or elsewhere in the Contract Documents.

13.5.5.2. For Claims of fifty thousand dollars (\$50,000) or less, Owner shall respond in writing within forty-five (45) days of receipt of the Claim, or Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Owner may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section upon mutual agreement of Owner and Claimant. Owner's written response to the Claim, as further documented, shall be submitted to Claimant within fifteen (15) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

13.5.5.3. For Claims over Fifty Thousand Dollars (\$50,000) and less than or equal to \$375,000: Owner shall respond in writing within sixty (60) days of receipt of the Claim, or Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Owner may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section, upon mutual agreement of Owner and Claimant; Owner's written response to the Claim, as further documented, shall be submitted to Claimant within thirty (30) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

13.5.5.4. Meet and Confer: If Claimant disputes Owner's written response, or Owner fails to respond within the time prescribed above, Claimant shall notify Owner, in writing, either within fifteen (15) days of receipt of Owner's response or within fifteen (15) days of Owner's failure to timely respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand Owner will schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

13.5.5.5. Following the meet and confer conference, if the Claim or any portion remains in dispute, Claimant may file a claim as provided under the Contract Documents and applicable law.

13.6. Other Matters

13.6.1. The provisions of this Article 13 constitute a non-judicial claim settlement procedure that, pursuant to Government Code Section 930.2, shall constitute a condition precedent to submission of a valid Government Code claim. Contractor shall bear all costs incurred in the preparation, submission, and administration of a claim. Any claims presented in accordance with the Government Code must

affirmatively indicate Contractor's prior compliance with the Claims procedure herein and the previous dispositions under Paragraphs 13.3 and 13.4 above of the claims asserted. No suit may be brought against Owner arising out of or in connection with the Contract unless and until Contractor presents to Owner a statutory Government Code Claim, in accordance with Government Code Sections 910, et seq. Pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 shall be reduced to 150 days from either accrual of the cause of action, substantial completion, or termination of the contract, whichever occurs first. In all other respects, the Government Code shall apply unchanged.

13.6.2. Failure to submit and administer Claims as required in Article 13 shall waive Contractor's right to claim on any specific issues not included in a timely submitted Claim. Claim(s) or issue(s) not raised in a timely protest and timely Claim submitted under this Article 13 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.

13.6.3. The Contractor shall submit Subcontractor claims in the same manner as other Claims. In the event a Subcontractor (on behalf of the Subcontractor or a lower-tier subcontractor) requests the Contractor in writing to present a Claim to the Owner and furnishes reasonable documentation supporting the Claim, the Contractor shall, within 45 days of receipt of the written request, notify the Subcontractor in writing as to whether the Contractor presented the claim to the Owner and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not doing so.

13.6.4. All waivers or modifications of this Article 13 may only be made a writing signed by the Owner and the Contractor, and approved as to form by legal counsel for both. Oral or implied modifications shall be ineffective.

13.6.5. Any failure by the Owner to respond within any time frame contained in Paragraphs 13.2 through 13.5 of this Article shall result in the Claim being deemed rejected in its entirety. No failure to meet a time requirement shall constitute an adverse finding with regards to the merits of the Claim or the responsibility or qualifications of the Contractor.

13.7. Compliance with Statutory Procedures. The foregoing provisions of Paragraphs 13.1 through 13.6 are intended to comply with Public Contract Code Section 9204 and, to the extent applicable, Public Contract Code Section 20104, et seq. In the event of any conflict, the applicable Public Contract Code provision will apply.

Article 14

Suspension and Termination

14. The following section discusses the provisions for suspension and termination.

14.1. Suspension for Cause. In addition to all other remedies available to Owner, if Contractor fails to perform or correct work in accordance with the Contract Documents, Owner may immediately order the Work, or any portion thereof, suspended until the cause for the suspension has been eliminated to Owner's satisfaction.

14.1.1. Contractor shall not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

14.1.2. Owner's right to suspend the Work shall not give rise to a duty to suspend the Work, and Owner's failure to suspend the Work shall not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

14.2. Suspension for Convenience. Owner reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for Owner's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by Owner pursuant to this provision, Contractor shall immediately suspend, delay, or interrupt the Work as directed by Owner. The Contract Price and the Contract Time shall be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

14.3. Termination for Default. Contractor may be deemed in default if Contractor refuses or fails to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; to make prompt payment to its employees, subcontractors, or suppliers; disregards laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of contract.

14.3.1. Upon Owner's determination that Contractor is in default, Owner may provide Contractor and its surety written notice of default and intent to terminate the Contract.

14.3.2. Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to Owner's satisfaction, Owner may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

14.3.3. Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the

Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety shall be deemed to have waived its right to complete the Work under the Contract, and Owner may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that Owner determines advisable under the circumstances. Contractor and its surety shall be jointly and severally liable for any additional cost incurred by Owner to complete the Work following termination. In addition, Owner shall have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

14.3.4. In the event Owner terminates for default and it is later determined that there was no default by Contractor, Owner's termination for default is automatically converted to a termination for convenience.

14.4. **Termination for Convenience.** Owner reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor shall immediately stop the Work, comply with Owner's instructions, and use its best efforts to minimize further costs. In the event of termination for convenience, Contractor shall be compensated as follows:

14.4.1. For the value of its Work performed to date, including overhead and profit;

14.4.2. For demobilization costs, and

14.4.3. Five percent (5%) of the total cost of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

The parties agree that this sum constitutes full and fair compensation to Contractor.

14.5. **Provisions Remaining in Effect.** Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 15
Miscellaneous Provisions

15. The following section discusses miscellaneous provisions of this contract.

- 15.1. **Assignment of Unfair Business Practice Claims.** Pursuant to Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment shall be effective at the time Owner tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 15.2. **Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents shall be deemed to be inserted, and the Contract Documents shall be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents shall be amended accordingly.
- 15.3. **Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless specified in writing by the waiving party.
- 15.4. **Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and shall not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 15.5. **Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that the Contract was awarded by Owner.

SUPPLEMENTAL CONDITIONS
Moraga Commons Park Picnic Area Renovation (CIP 19-302)

1. **Reference to CalTrans Standard Specifications.** Any reference to "CalTrans Standard Specifications," "State Specifications," or "CSS" within these Contract Documents shall mean the applicable versions of the Standard Specifications of the State of California, Department of Transportation and any associated Revised Standard Specifications or "RSS" specified in the General Conditions and, if none, the current version. Regardless, the following shall apply:
 - 1.1. In case of conflict between the CalTrans Standard Specifications and the Contract Documents, the Contract Documents shall govern.
 - 1.2. Where the term "Engineer" is used in the CalTrans Standard Specifications, it shall mean the Town Engineer or authorized designee(s).
 - 1.3. Where the term "Director" is used in the CalTrans Standard Specifications, it shall mean the Town Manager or authorized designee(s).
 - 1.4. Where the term "Special Provisions" is used in the Standard Specifications, it shall mean these Contract Documents.
 - 1.5. Where the term "State" is used in the Standard Specifications, it shall mean "Town of Moraga" or "Owner."
 - 1.6. Where the term "Owner" is used, it shall mean "Town of Moraga" unless otherwise stated.
 - 1.7. Any provisions for measurement and payment specified in the Standard Specifications shall be disregarded and the provisions of the Contract Documents shall govern.
2. **Reference to Greenbook.** Any reference to "Greenbook Standard Specifications," "Greenbook Specifications," or "Greenbook" within these Contract Documents shall mean the applicable versions of the Standard Specifications of Public Works Construction, 2018 *Ed.*, Publ. BNi Building News.
3. **Builder's Risk Insurance.** Builder's Risk Insurance is not required for this project.
4. **Authorized Work Days and Hours.**

4.1. **Authorized Work Days.**

4.1.1. Except as expressly authorized in writing by the Owner, the Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays: Monday – Friday

4.2. **Holidays.** The following is a list of dates on which Holidays are observed for the period between February 2023 and December 2023:

Presidents Day	February 20, 2023
Memorial Day	May 29, 2023

Independence Day	July 4, 2023
Labor Day	September 4, 2023
Veterans Day	November 10, 2023
Thanksgiving Day	November 23, 2023
Day after Thanksgiving	November 24, 2023
Christmas Day	December 25, 2023

4.3. Authorized Work Hours.

4.3.1. Except as expressly authorized in writing by the Owner, the Contractor is limited to performing Work on the Project during the following hours between September 26, 2022 and December 30, 2022 (start of the 2021-2022 event season year): 8:00 a.m. to 4:30 p.m.

4.4. Work outside of Authorized Work Days or Authorized Work Hours.

4.5. Except as expressly authorized in writing by the Owner, the Contractor shall not work outside of Authorized Work Days or Authorized Work Hours. Work by the Contractor outside of Authorized Work Days or Authorized Work Hours is subject to penalty in accordance with Section 15 of these Supplemental Conditions.

5. **For Reference Only.** The Contractor shall be responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. The Contractor shall promptly notify the Architect/Engineer of any perceived or actual conflict between the Contract Documents and any document provided For Reference Only.

6. **Changed Quantity Payment Adjustments.** The Owner may make changes within the scope of work and add extra work. The Owner will describe the changes and extra work, the payment basis, and any time adjustment in a Change Order in accordance with the General Conditions. The Architect/Engineer shows a bid item quantity as a final pay item for payment purposes only. For a final pay item, the Contractor shall accept payment based on the Bid schedule listed quantity, regardless of actual quantity used, unless dimensions are changed by the Architect/Engineer. Where an adjustment in quantity is deemed appropriate by the Architect/Engineer, for changes of 50 percent or less difference between a Bid Schedule listed quantity and a final item quantity, payment adjustments will be determined based on the bid item unit prices and final item quantity as determined by the Owner. If a Unit Cost adjustment is requested for a final item quantity of greater than 50 percent difference from the Bid schedule listed quantity, the Contractor shall submit

detailed cost data for a unit price adjustment for a bid item.

6.1. If the total bid item quantity exceeds 150 percent of the quantity shown on the Bid Item List and if no approved Change Order addresses payment for the quantity exceeding 150 percent, the Owner may adjust the unit price for the excess quantity under Section 7.43 of the General Conditions or the following:

6.1.1. The adjustment is the difference between the unit price and the unit cost of the total item pay quantity.

6.1.2. In determining the unit cost, the Owner excludes the item's fixed costs. The Contractor shall have recovered the fixed costs in the payment for 150 percent shown on the Bid Item List.

6.1.3. After excluding fixed costs, the Owner determines the item unit cost under Section 7.43 of the General Conditions.

If the payment for the number of units of a bid item in excess of 150 percent of the Bid Item List is less than \$5,000 at the unit price, the Owner may not adjust the unit price unless the Contractor requests it.

6.2. If the total item pay quantity is less than 50 percent of the quantity shown on the Bid Item List and if no approved Change Order addresses payment for the quantity less than 50 percent, the Contractor may request a unit price adjustment. The Owner may adjust the unit price for the decreased quantity under Section 7.43 of the General Conditions or the following:

6.2.1. The adjustment is the difference between the unit price and the unit cost of the total pay quantity.

6.2.2. In determining the unit cost, the Owner includes the item's fixed costs.

6.2.3. After including fixed costs, the Owner determines the item unit cost under Section 7.43 of the General Conditions.

7. **Eliminated Items.** If the Owner eliminates an item, the Owner pays the Contractors documented costs incurred before the elimination notification date. The Contractor shall provide all supporting documentation demonstrating the costs incurred and justification to the Owner prior to a change order being prepared. If the Contractor orders authorized material for an eliminated item before the notification date and the order cannot be canceled, either of the following occurs:

7.1. If the material is returnable to the vendor, the Owner orders the Contractor to return the material and the Owner pays the Contractor's handling costs and vendor charges.

7.2. The Owner pays the Contractor's cost for the material and its handling and becomes the material owner.

The Owner determines the payment for the eliminated bid item in accordance with Section 7.43 of the General Conditions.

8. **Price Index Fluctuations.** Payment adjustments will not be provided for price

Index fluctuations.

9. **Mobilization Costs.** Mobilization costs shall not exceed 5 percent to the total contract value.
10. **Demobilization Costs.** Demobilization costs shall not be reimbursable prior to 50 percent completion of the project work based on the bid schedule, at less than 25 percent of demobilization bid prior to 75 percent completion, at less than 50 percent of demobilization bid prior to substantial completion, and the remaining demobilization cost may be reimbursed after final completion is attained. The Contractor shall not invoice for work prior to the work being completed and reimbursable.
11. **New Utility Connections.** The Owner shall pay connection charges and meter costs for new permanent utilities required by the Contract Documents. The Contractor shall notify the Owner sufficient in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.
12. **Disposal of Waste.** All waste materials shall be properly disposed of by the Contractor immediately upon generation, and the Contractor shall maintain the site in a neat and clean condition. The Contractor shall be responsible for all costs associated with the storage, removal and disposal of waste materials associated with their or their subcontractor's construction activities. The Contractor shall not dispose of waste in Town-owned or leased or private third party owned or leased waste facilities or bins except as expressly authorized in writing by the Owner. The Contractor shall be responsible for complying with any requirements for waste recycling, and shall register with and provide all documentation required by "Green Halo Systems" for the town of Moraga and Contra Costa County.
13. **Security.** The contractor is responsible for securing the construction site to reasonably exclude authorized access by the general public and maintain a safe working environment for the public, the owner and their agents, and the contractor's workers and subcontractor's both during construction and during period when construction is not occurring.
14. **Disposal of Materials Outside of Street Right-of-Way.** The Contractor shall be responsible for all costs associated with disposal of excavated materials on property owned or controlled by third parties. Prior to disposal of any such materials on property owned or controlled by third parties, the Contractor must obtain: (1) written permission from the third party owner or its lawful representative; (2) a written release from the third party owner or its lawful representative, releasing the Owner from any and all liability arising from the disposal on that property; and (2) written permission from the Owner's Representative to dispose of the materials at the location.
15. **Emergency Contact.** At or prior to the pre-construction conference, Contractor must provide the Owner's Representative with the name and telephone number(s) for the person(s) designated by the Contractor to serve as the emergency contact at all times until the Project is completed. The person(s)

designated to serve as the Contractor's emergency contact for this Project must be able at all times to arrive at the Worksite within thirty (30) minutes following notification of an emergency by the Town or the Owner, regardless of the time of day.

16. **Payment of Subcontractors.** A prime Contractor or Subcontractor shall pay any Subcontractor not later than ten (10) working days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to Subcontractors, unless a longer period is agreed to in writing by the parties. Any delay or postponement of payment over thirty (30) working days may take place only for good cause and with the Owner's prior written approval. Any violation of Section 7108.5 shall subject the violating Contractor or Subcontractor to the penalties, sanction, and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the 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.
17. **Liquidated Damages.** In addition to the requirements set forth in the Agreement and the General Conditions, liquidated damages on this project shall include the following:
 - 17.1. The Contractor shall not begin work earlier than and shall terminate work no later than the Authorized Work Hours on any Authorized Work Day as shown in Section 6 above. Except where authorized in writing by the Owner, the Contractor shall restore full access to all streets and properties, and complete the scheduled day's work within the Authorized Work Hours and Work Days. In addition, the Contractor shall be responsible for clean up or repair of private property damaged by Contractor activities. The Contractor shall pay the Owner a penalty of \$100 for each hour work occurring outside the Authorized Work Days or Work Hours, or portion thereof, unless otherwise expressly authorized in writing by the Owner.
 - 17.2. The Contractor shall be required to clean tracking or spill by the Contractor's, or subcontractor's, equipment on Owner streets, parking lots or paved areas that may discharge to storm drains. If the tracking or spill by the Contractor's or subcontractor's equipment on Owner streets, parking lots or paved areas that may discharge to storm drains is not restored to the original condition, per the Construction Manager's review, the Contractor shall pay to the Owner a penalty of \$500 per incident.
 - 17.3. This is a working facility subject to public usage, the Contractor shall maintain access at all times to the streets, driveways, parking lots, buildings and other facilities outside of the construction zone, unless otherwise expressly authorized in writing by the Owner. Failure of the Contractor to maintain access is subject to a penalty of \$100 for each hour that access is obstructed or otherwise unavailable staff or public, except as expressly authorized in writing by the Owner.

17.4. Generating noise outside of approved working hours or posted working days is prohibited. Failure of the Contractor to maintain noise levels within acceptable limits during the approved hours, during authorized working days, and during the days the public has been notified that noise generating activities shall occur is subject to a penalty of \$100 for each hour or portion thereof that noise generating activities exceed the threshold limits specified herein, except as expressly authorized in writing by the Owner.

17.5. The Contractor shall maintain a safe and secure site and not create conditions that may place the public, owner or workers risk of harm. The Contractor shall address any and all unsafe conditions or site security issues immediately. The Contractor shall pay the Owner a penalty of \$100 per hour or portion thereof, if the site is deemed to cause safety hazards or is unsecure and remains so more than one (1) hour after notification by the Construction Manager.

18. **Order of Precedence:** The order of precedence for this Contract under Section 4.6 of the General conditions shall be superseded and modified as follows:

18.1. Except where explicitly noted in the Standard Provisions or Plans, the following order of precedence shall apply, beginning from highest to lowest: approved Change Orders; addenda; the Contract; the notice of award and notice to proceed; the Supplemental Conditions, if any; the General Conditions; the Special Provisions; the payment and performance bonds; the plans, specifications and drawings; current California building codes, ACI Standards, ASTM Standards, the "Greenbook" Standard Specifications and Plans, the County Specifications, Caltrans Standard Plans and Caltrans Standard Specifications not specifically referenced in the Contract Documents, in that order.

19. **Access:** The Contractor shall not impair or impede access for workers or the public to the adjacent facilities, building or other amenities of the Moraga Commons Park, except in the defined construction area as approved by the Owner or as expressly authorized in writing by the owner. The Contractor shall be aware of the general public, including children may be present near the construction site and should take all appropriate precautions.

20. **Storm Water Compliance:** Along with all applicable regulations of the State Water Resources Control Board, Regional Water Quality Control Board-Region, or the Contra Costa County Clean Water Program:

20.1. the Contractor shall comply with applicable provisions of Contra Costa County Clean Water Program and Section C.6 of the current Municipal Regional Permit.

20.2. The Contractor shall submit an erosion control plan (ESCP), or a Storm Water Pollution Prevention plan (SWPPP) to the Owner for review and approval.

20.3. The Contractor shall be responsible to implement all requirements set forth in the approved ESCP or SWPP plan

21. **Air Board Regulations:** The Contractor shall comply with all applicable provisions of California Air Resources Board and the Bay Area Air Quality Management District.
22. **ADA and Accessible Facilities.** The Contractor shall construct all facilities to conform with Americans with Disabilities Act (ADA) and California Accessibility requirements.
23. **Retention Release.** Inclusive of the requirements as set forth in Section 9.7 of the General Conditions, the Contractor shall submit a request for release of retention as an invoice no less than 20 days nor more than 35 days after recording of the Notice of Acceptance or other equivalent instrument with the Contra Costa County Recorder.

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS
Commons Park Picnic Area Renovation (CIP 19-302)
[Public Contract Code Section 7100]

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (**Agreement and Release**), made and entered into this _____ day of _____, 20____ by and between **TOWN OF MORAGA (Owner)**, and _____ (**Contractor**), whose place of business is at _____.

RECITALS

- A. Owner and Contractor entered into Contract (the "**Contract**") for construction of Owner's **Commons Park Picnic Area Renovation, TOWN CIP NO. 19-302**
- B. The Work under the Contract has been completed.

AGREEMENT

NOW THEREFORE, it is mutually agreed between Owner and Contractor as follows:

1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$ _____
Modified Contract Sum	\$ _____
Payment to Date	\$ _____
Liquidated Damages	\$ _____
Payment Due Contractor	\$ _____

2. Subject to the provisions of this Agreement and Release, Owner will forthwith pay to Contractor the sum of _____ Dollars and _____ Cents (\$_____) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with Owner as of the date of such payment.
3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against Owner arising from the Contract, except for the claims described in Paragraph 4 of this Document. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against Owner, and all of its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document. Nothing in this Agreement and Release shall limit or modify Contractor's continuing obligations described in Paragraph 6 of this Document.

4. The following claims submitted under (General Conditions), Article 13, are disputed (Disputed Claims) and are specifically excluded from the operation of this Agreement and Release.

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

5. Consistent with California Public Contract Code Section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document, Contractor hereby releases and forever discharges Owner, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.

6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.

7. Contractor shall immediately defend, indemnify and hold harmless Owner, any of the Owner's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document.

8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision

or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.
11. All rights of Owner shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

12.

***** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING *****

The parties agree to this Agreement and Release of Any and All Claims as witnessed by the signatures below:

OWNER:

s/ _____

Brian Dolan
Town Manager

Date: _____

Attest:

s/ _____

Yashin Abbas
Town Clerk

Date: _____

Seal:

CONTRACTOR:

s/ _____

Name: _____

Title: _____

Company: _____

Address: _____

Approved as to Form:

s/ _____

Michelle Marchetta Kenyon
Town Attorney

Date: _____

Approved:

s/ _____

Annie To
Director of Finance

Date: _____

GUARANTY
Commons Park Picnic Area Renovation (CIP 19-302)

TO: The TOWN OF MORAGA (Owner), for construction of the Commons Park Picnic Area Renovation (CIP 19-302), Town CIP No. 19-302.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

1. Contractor hereby grants to Owner for a period of one year following the date of Final Acceptance of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.
2. Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.
3. If within one year after the date of Final Acceptance, or such other period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents or any extended warranty or guaranty, any Work is found to be Defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to comply promptly with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
4. Observation and inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.
5. This Guaranty is in addition to any other Contractor warranties contained in the Contract Documents, and not in lieu of, any and all other Contractor liability

imposed under the Contract Documents or at law. In the event of any conflict or inconsistency between the terms of this Guaranty and any Contractor warranty or obligation Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the greater protection to Owner.

CONTRACTOR:

s/ _____ Date: _____

Name (Print): _____

Title : _____

Contractor Name: _____

Contractor Address: _____

SUBSTITUTION REQUEST FORM
Commons Park Picnic Area Renovation (CIP 19-302)

To: _____ (CM)

Telephone Number: (____) _____ - _____

Town of Moraga (Owner)

Attn: Bret Swain, Senior Engineer

Telephone Number: (925) 888-_____

PROJECT: Commons Park Picnic Area Renovation	Contractor:
TOWN CIP NO. 19-302	

Substitution Request By:	Firm:
--------------------------	-------

Transmittal Record	Attn:	Firm:	Date Sent:	Date Rec'd:	Date Due:
Contractor to Owner					
Contractor to Architect/Engineer					
Owner/Architect/Engineer to Consultant					
Architect/Engineer to Owner Representative					
Owner Representative to Contractor					

We hereby submit for your consideration the following product instead of the specified item for the Project:

Section / Drawing	Article	Specified Item
Proposed Substitution:		

We have (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Contract Documents that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

Contractor to complete the questions that follow and certify to the accuracy of all answers:

A. Does the substitution affect dimensions shown on Drawings? Yes ___ / No ___. If No, please explain proposed mitigation and why substitution is equivalent to originally specified item:

B. Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution? Yes ___ / No ___. If No, please state reasons explain why substitution is equivalent to originally specified item:

C. What effect does the substitution have on other trades? No effect: ___ / Some effect ___. If substitution will affect other trades, please explain the effect and why substitution is equivalent to originally specified item:

D. Will substitution cause change to Project Schedule, or to critical delivery dates? Add? Shorten? If the substitution will add to schedule dates or affect critical activities, please explain why substitution is equivalent to originally specified item:

E. Please describe differences between proposed substitution and specified item? Please explain and identify any and all differences, and please explain why substitution is equivalent to originally specified item:

F. What is the Cost Differential to Contractor in original specified item and proposed substitution including all mark-ups? [If substitution requested during bid period, skip this question.]

G. Are Manufacturer's guarantees for the proposed item the same as for item specified? Yes ____; No _____. If No, please explain why substitution is equivalent to originally specified item:

H. Contractor accepts full responsibility for delays caused by redesign of other items of the Work necessitated by substitution? Yes ___ / No ___. If No, please state reasons and explain why substitution is equivalent to originally specified item:

I. Contractor states that the function, appearance and quality are equivalent or superior to the specified item? Yes ___ / No ___. If No, please explain why substitution is equivalent to originally specified item:

We certify that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item, except as we may specifically state otherwise in this request.

Submitted by: _____ Signature: _____

Firm: _____ Date: _____

Address: _____ Phone/ Fax: _____

Remarks: _____

Consultant Response:
 Accepted
 Not Accepted
 Accepted As Noted
 Received Too Late

Owner Representative Response:
 Accepted
 Not Accepted
 Accepted As Noted
 Received Too Late

Remarks: _____

Remarks: _____

By: _____

By: _____

CONTRACTOR:

s/ _____

Date: _____

Name (Print): _____

Title : _____

Contractor Name: _____

Contractor Address: _____

SECTION 01 20 00
MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.01 CONDITIONS:

- A. Bid items, as listed in the Bid Schedule, shall be bid and paid based on the Measurement and Payment as listed below. The Bid Items are presented to indicate major categories of the work for purposes of comparative bid analyses and payment breakdown for monthly progress payments. Bid items are not intended to be exclusive descriptions of work categories and the Contractor shall determine and include in its pricing all materials, incidentals, labor, and equipment necessary to complete each Bid Item as shown and specified.
- B. Contractor shall perform all work depicted in the Contract Documents whether it is specifically mentioned in the Bid Schedule and Measurement and Payment items or not. The Bid Schedule and Measurement and Payment items below are not intended to cover any and all Work depicted in the Contract Documents. Not all elements of every part of Work are explicitly listed. It is the intention of the Town, and a provision of this Contract, that any and all of the Work depicted shall be included in the Contractor's bid and installed complete at a price included in a Bid Item submitted with the Contractor's bid. No adjustment will be made to unit, extended, or total price for an item that is depicted in the Contract Documents but is not specifically described or itemized. Such items may be included for payment in a Bid Item of the Contractor's choice, as long as the chosen Bid Item is closely related.

PART 2 - PRODUCTS

2.01 BID ITEM NO.1 – MOBILIZATION (NOT TO EXCEED 5% OF BASE BID)

- A. **Mobilization** is a LUMP SUM (LS) pay item and will not be measured separately.
- B. Payment for Mobilization will be based on Town acceptance of required submittals and will be made as a LUMP SUM. The contract lump sum price paid for this item shall include full compensation for furnishing all labor, supervision, materials, tools, equipment and incidentals, and for all the work involved in mobilization, including, but not limited to, furnishing all specified contract bonds and insurance certificates, transporting equipment, establishing a staging area, sanitary restroom facilities and all other work as specified in the Caltrans Standard Specifications and these Special Provisions and as directed by the Architect and no additional compensation will be allowed therefor.

C. Partial payments for “Mobilization” will be made in accordance with Public Contract Code § 10264:

1. When 5 percent (5%) of the original contract amount is earned, 50 percent (50%) of the amount bid for mobilization, or 5 percent (5%) of the original contract amount, whichever is lesser, may be paid.
2. When 10 percent (10%) of the original contract amount is earned, 75 percent (75%) of the amount bid for mobilization or 7.5 percent (7.5%) of the original contract amount, whichever is lesser, may be paid
3. When 20 percent (20%) of the original contract amount is earned, 95 percent of the amount bid for mobilization, or 9.5 percent (9.5%) of the original contract amount, whichever is lesser, may be paid.
4. When 50 percent (50%) of the original contract amount is earned, 100 percent (100%) of the amount bid for mobilization, or 10 percent (10%) of the original contract amount, whichever is lesser, may be paid.
5. Upon completion of all work on the project, payment of any amount bid for mobilization in excess of 10 percent (10%) of the original contract amount will be paid.

D. In addition to the requirements specified above, all submittals shall conform to the applicable requirements of the Submittal Procedures.

2.02 BID ITEM NO. 2 – EROSION CONTROL

A. **Erosion Control** is a LUMP SUM (LS) pay item and will not be measured separately.

B. Payment for Erosion Control will be made as a LUMP SUM. The Contract lump sum price paid for this item shall include but not be limited to full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all the work involved in furnishing, installing, maintaining, relocating and removing when no longer required best management practices, erosion and sedimentation control measures such as temporary fiber rolls, temporary silt fences, maintenance of construction entrance, protecting adjacent waterways, temporary drainage inlet protection, maintaining construction entrance/exit, temporary concrete washout, stockpile cover, protection of storage and recyclable materials, portable toilets, maintaining drainage patterns to allow flows to the low points, as specified in the Standard Specifications, these Special Provisions, and as directed by the Architect.

2.03 BID ITEM NO. 3 – LANDSCAPE PRESERVATION

A. **Landscape Preservation** is a LUMP SUM (LS) pay item and will not be measured separately.

B. Payment for **Landscape Preservation** will be made as a LUMP SUM. The Contract lump sum price paid for this item shall include but not be limited to full compensation for furnishing all labor, materials, tools, equipment, incidentals, temporary systems, arborist

services, watering of existing landscaping, protection of existing landscaping to remain, and for doing all the work involved in implementing **Landscape Preservation** for the entire project duration complete in place, as required by the Contract Documents, as specified in the Standard Specification and these Special Provisions, and as directed by the Architect.

C. All irrigation and planting damaged by the contractor during the duration of construction including but not limited to lawns, shrubs, groundcovers, and trees shall be paid for by the contractor as **Landscape Restoration** with no additional adjustment to the agreed to contract price or quantities.

2.04 BID ITEM NO. 4 –DEMOLITION

A. **Demolition** is a LUMP SUM (LS) pay item and will not be measured separately.

B. Payment for **Demolition** will be made as a LUMP SUM. The Contract lump sum price paid for this item shall include but not be limited to full compensation for furnishing all labor, trucking, disposal, materials, tools, equipment, and incidentals and for doing all the work involved in Demolition for the entire project, including all clearing, grubbing, performing all work in Section 31 10 00, saw-cutting, removals, salvaging removed items and site furnishings, temporary fencing, mapping of all site and street utilities/conduits by a qualified utility locating company, removing pipes and utilities as needed; removing all concrete, curbs, base and gutters as needed; removing of structure footings, fence footings; removing and stockpiling of signs, removal of existing irrigation and plantings, and any site preparation and demolition items not included on the plans or in a specific bid item, but is necessary to complete the improvements, will also be consider included the in “Demolition”. Contractor is responsible for including all demolition necessary to complete the project based on Contractor’s thorough site investigation prior to bid. All work related to Demolition shall also be completed as shown on the plans, as specified in the Standard Specifications and these Special Provisions, and as directed by the Architect.

2.05 BID ITEM NO. 5 –TREE REMOVAL

A. **Tree removal** will be measured for payment by the unit EACH (EA) pay item and will not be measured separately.

B. Payment for **Tree removal** will be made as EACH. The Contract lump sum price paid for this item shall include but not be limited to full compensation for furnishing all labor, trucking, disposal, materials, tools, equipment, and incidentals and for doing all the work involved in tree removal for the entire project, including, performing work in part 3.05_C in section 31 10 00 included stump grinding, root removal and material off haul will also be consider included the in “Tree removal”. Contractor is responsible for including all tree removal necessary to complete the project based on Contractor’s thorough site investigation prior to bid. All work related to Tree removal shall also be completed as shown on the plans, as specified in the Standard Specifications and these Special Provisions, and as directed by the Architect.

2.06 BID ITEM NO. 6 –WATER LINE RELOCATION

- A. **Water line relocation** will be measured and paid for by the LINEAR FOOT (LF) pay item and will not be measured separately.
- B. Payment for **Water line relocation** will be made as a LINEAR FOOT. The Contract lump sum price paid for this item shall include but not be limited to full compensation for furnishing all labor, trucking, disposal, materials, tools, equipment, and incidentals and for doing all the work involved in Water line relocation for the entire project including but not limited to, all trenching, backfilling, piping materials, temporary fencing, mapping of all site and street utilities/conduits by a qualified utility locating company, removing pipes and utilities as needed; removing and stockpiling any site preparation that is necessary to complete the improvements, will also be consider included the in “Water line relocation”. Contractor is responsible for including all materials and labor necessary to complete the project based on Contractor’s thorough site investigation prior to bid. All work related to Water line relocation shall also be completed as shown on the plans, as specified in the Standard Specifications and these Special Provisions, and as directed by the Architect.

2.07 BID ITEM NO. 7 – GRADING

- A. **Grading** is a LUMP SUM (LS) pay item and will not be measured separately.
- B. Measurement: Grading will be measured for payment as a lump sum, acceptably performed and completed. The Bid amounts shall include all costs associated with the Work specified herein, including dewatering, rehandling of stockpiled material, borrow excavation, and excavation support and protection.
- C. Pervious backfill will not be measured separately for payment, and all costs in connection therewith will be considered included in the contract price paid for Grading.
- D. Quantities will be computed, based on the neat lines or pay lines, section profiles, contours, and dimensions indicated on the Contract Drawings.
- E. The upper limit for payment of excavations shall be the ground surface as it existed prior to the start of construction operations.
- F. The upper limit for payment of backfill, when not indicated, shall be the ground line at the time the excavation is made; except the upper limit for fill shall be the finished grade indicated.
- G. The lower limits for computing pay quantities of excavation and backfill shall be a plane at the bottom of the completed footings or structures. The lower limit of fill shall be the existing grade at start of construction, or the excavated bottom as indicated.
- H. Payment for **Grading** shall include but not be limited to full compensation for furnishing all labor, materials, tools, equipment, incidentals, scarifying of soil, rough grading, fine grading, excavations, off haul, import soils, and all compaction, complete in place for all

work as shown on the plans as specified in the Standard Specifications and these Special Provisions, and as directed by the Architect.

2.08 BID ITEM NO. 8 – CONCRETE PAVING

- A. **Concrete Paving** including formwork, reinforcement, finishes, aggregate base, and subgrade preparation will be measured for payment by the SQUARE FOOT installed complete in place.
- B. The contract unit price paid per SQUARE FOOT for **Concrete Paving** shall include but not limited to full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all the work involved in installing the Concrete Paving complete in place, including excavation, aggregate, reinforcing, bedding, backfill, mockups, and all other related work involved in the installation of **Concrete Paving** per Town of Moraga standard details, as shown on the Contract Documents, as specified in the Standard Specification and these Special Provisions, and as directed by the Architect.
- C. Concrete forming, Concrete, Portland cement, dowels, aggregates, curing, admixtures, finishing, sealants, reinforcement, saw cutting, joints, mockups, testing and analysis of materials, mix designs, batching, mixing, transportation, inspection, testing, repairs, and replacements will not be measured separately for payment. All costs in connection therewith will be incidental to and included with the applicable items of work.

2.09 BID ITEM NO. 9 – CONCRETE CURB

- A. **Concrete Curb** including finishes, aggregate base, and subgrade preparation will be measured and paid for by the LINEAR FOOT (LF), installed complete in place, parallel to finished grade, from end of curb to end of curb. Measured from the center line of the curb.
- B. The contract unit price paid per LINEAR FOOT for **Concrete Curb** shall include but not limited to full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all the work involved in installing the Concrete curb complete in place, including excavation, aggregates, bedding, backfill, reinforcing, and all other related work involved in the installation of **Concrete Curb** per Town of Moraga standard details, as shown on the Contract Documents, as specified in the Standard Specification and these Special Provisions, and as directed by the Architect.
- C. Concrete forming, Concrete, Portland cement, dowels, aggregates, curing, admixtures, finishing, sealants, reinforcement, saw cutting, joints, mockups, testing and analysis of materials, mix designs, batching, mixing, transportation, inspection, testing, repairs, and replacements will not be measured separately for payment. All costs in connection therewith will be incidental to and included with the applicable items of work.

2.10 BID ITEM NO 10 – BBQ GRILLS

- A. **BBQ Grills** including anchoring, footings, and hardware, as applicable, will be measured for payment by the unit EACH (EA) for each item, installed complete in place.
- B. The contract unit price paid for EACH for **BBQ Grill** (Large BBQ Grill and ADA BBQ Grill) shall include but not be limited to full compensation for furnishing all labor, materials, tools, equipment, incidentals, footings, and for doing all the work involved in completing **BBQ Grill**, complete in place, as required by the Contract Documents, as specified in the Standard Specification and these Special Provisions, and as directed by the Architect.
- C. Adhesives, anchors, connections, footings, removal of spoils, hardware, mockups, repairs, and warranties will not be measured separately for payment. All costs in connection therewith will be considered incidental to and included with the applicable items of work.

2.11 BID ITEM NO 11 – TRASH AND RECYCLING RECEPTACLES

- A. **Trash and Recycling Receptacles** including anchoring, footings, and hardware, as applicable, will be measured for payment by the unit EACH (EA) for each item, installed complete in place.
- B. The contract unit price paid for EACH for **Trash and Recycling Receptacles** shall include but not be limited to full compensation for furnishing all labor, materials, tools, equipment, incidentals, footings, lids, graphic labels, and for doing all the work involved in completing **Trash and Recycling Receptacles**, complete in place, as required by the Contract Documents as specified in the Standard Specification and these Special Provisions, and as directed by the Architect.
- C. Adhesives, anchors, connections, footings, removal of spoils, hardware, mockups, repairs, and warranties will not be measured separately for payment. All costs in connection therewith will be considered incidental to and included with the applicable items of work.

2.12 BID ITEM NO 12 – PICNIC TABLES

- A. **Picnic Tables** including anchoring, footings, and hardware, as applicable, will be measured for payment by the unit EACH (EA) for each item, installed complete in place.
- B. The contract unit price paid for EACH for **Picnic Tables** (ADA Picnic Tables and Standard Picnic Tables) shall include but not be limited to full compensation for furnishing all labor, materials, tools, equipment, incidentals, footings, and for doing all the work involved in completing **Picnic Tables**, complete in place, as required by the Contract Documents as specified in the Standard Specification and these Special Provisions, and as directed by the Architect.

- C. Adhesives, anchors, connections, footings, removal of spoils, hardware, mockups, repairs, and warranties will not be measured separately for payment. All costs in connection therewith will be considered incidental to and included with the applicable items of work.

2.13 BID ITEM NO 13 – UTILITY TABLE

- A. **Utility Table** including anchoring, footings, and hardware, as applicable, will be measured for payment by the unit EACH (EA) for each item, installed complete in place.
- B. The contract unit price paid for EACH for **Utility Table** shall include but not be limited to full compensation for furnishing all labor, materials, tools, equipment, incidentals, footings, and for doing all the work involved in completing **Utility Table**, complete in place, as required by the Contract Documents as specified in the Standard Specification and these Special Provisions, and as directed by the Architect.
- C. Adhesives, anchors, connections, footings, removal of spoils, hardware, mockups, repairs, and warranties will not be measured separately for payment. All costs in connection therewith will be considered incidental to and included with the applicable items of work.

2.14 BID ITEM NO 14 – SHADES STRUCTURE

- A. **Shade Structure** shall be measured and paid for by EACH (EA) location.
- B. The contract unit price paid for EACH for **Shade Structure** shall include but not be limited to full compensation for furnishing all labor, materials, tools, equipment, incidentals, shop drawings, structural Architecting, calculations, permitting, and for doing all the work involved in completing **Shade Structure**, complete in place, as required by the contract documents, as specified in the Standard Specification and these Special Provisions, and as directed by the Architect.
- C. Adhesives, anchors, connections, footings, removal of spoils, hardware, mockups, repairs, and warranties will not be measured separately for payment. All costs in connection therewith will be considered incidental to and included with the applicable items of work.
- D. All planting damaged by the contractor during the duration of construction including but not limited to lawns, shrubs, groundcovers, and trees shall be paid for by the contractor with no additional adjustment to the agreed to contract price or quantities.

2.15 BID ITEM NO. 26 - DEMOBILIZATION

- A. **Demobilization** is a LUMP SUM (LS) pay item and will not be measured separately.
- B. Payment for **Demobilization** will be based on Town acceptance of required submittals and will be made as a LUMP SUM. The contract lump sum price paid for this item shall include full compensation for furnishing all labor, supervision, materials, tools, equipment and incidentals, and for all the work involved in **Demobilization**, including, but not limited

to, removal of mobilized facilities and all other work as specified in the Caltrans Standard Specifications and these Special Provisions and as directed by the Architect and no additional compensation will be allowed therefor.

- C. Payment for demobilization shall occur when all required items per the contract are fulfilled, including requirements of Section 01770, "Contract Closeout", the submittal and acceptance of Contractor's record as-built drawings, conformance of completion in writing by the Architect, completion of all punch list items, and the site is free of equipment, spare materials, temporary facilities, and is clean.

END OF SECTION

SECTION 01 56 39
LANDSCAPE PRESERVATION

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. The scope of work outlined in this Section includes the following items of work, as detailed in these Contract Specifications, as shown on the Contract Drawings or reasonably implied therefrom and is not limited to the following items:
 - 1. Arborist Services
 - 2. Landscape Preservation
 - 3. Landscape Restoration
 - 4. Trimming of tree (limbs and tree roots) as may be required to construct the improvements.

B. Related Work

- 1. Section 31 10 00 – Clearing, Grubbing, and Miscellaneous Demolition shall be coordinated with the Town before the beginning of all work.
- 2. The work shall include the provision of all labor, materials, equipment, temporary irrigation systems, tree fencing, arborist services, tree protection, Landscape replacement, and apparatus not specifically mentioned herein or noted on the plans, but which are incidental and necessary to complete the work specified.

1.2 RELATED DOCUMENTS

- A. These Contract Specifications are part of the Contract Drawings and shall include but not be limited to all labor, materials, equipment, reasonable incidentals, and services necessary for the execution of the Work installed complete in place.
- B. Refer to all other sections, determine the extent and character of related work, and coordinate all work to produce a complete, properly constructed product.

1.3 JOB CONDITIONS

- A. The Contractor will be held responsible for any damage to trees or other plants, which are to remain during construction, including limb or branch breakage, tearing of bark along trunk or excessive root damage. Large roots greater than 6" in diameter and 12" below ground level shall not be cut without the Project Arborist's approval.

1.4 QUALITY CONTROL AND ASSURANCE

- A. Supervision and Workmanship: The Contractor, personally or through an authorized and competent representative, shall supervise the work constantly, and shall as far as possible keep the same foreman and workmen on the job from commencement to completion. The workmanship of the entire job must in every way be first class, and only experienced and competent workmen will be allowed on the job.

1.5 APPLICABLE PUBLICATIONS

- A. Trees and Building Sites: Official Publication of the International Society of Arboriculture.
- B. Arboriculture: The care of trees and shrubs by Dr. Richard Harris
- C. Best Management Practices, Tree Pruning. 2008. International Society of Arboriculture, PO Box 3129, Champaign, IL 61826-3129. 217-355-9411
- D. ANSI A300 Pruning Standards. 2008 Edition. Ibid. (Covers tree care methodology).
- E. ANSI Z133.1 Safety Requirements for Arboricultural Operations. 2006 Edition. Ibid. (Covers safety).

1.6 SUBMITTALS

- A. Arborist certification.
- B. Contractor shall review and document all existing conditions around the project site with detailed photos and submit a digital copy to the Engineer and Landscape Architect as record of existing conditions prior to the start of construction.
- C. Contractor shall verify the irrigation system to all existing planting areas to remain is fully automated and operational. Submit documentation in writing to the Engineer and Landscape Architect.
- D. Contractor shall review and document all existing irrigation systems and planting to remain around the project site with a report notifying the Engineer and Landscape Architect of any deficiencies and/ or failures that may impact the health of the existing landscape to be preserved. Submit documentation in writing to the Engineer and Landscape Architect.

1.7 PRESERVATION OF PROPERTY

- A. Existing Conditions: Exercise caution against injury to, or defacement of, existing conditions. At Contractor's expense, repair or replace items damaged from installation operations.
- B. Protect existing on- and off-site improvements, utilities, and plants from damage. No vehicles shall be allowed to pass over curbs, sidewalk, and planting areas unless proper protection is provided. Damage resulting from Contractor's operations shall be repaired or replaced at the Contractor's expense and to the Engineer's satisfaction.
- C. Do not rototill or mechanically trench or excavate within drip line of existing trees to remain within or adjacent to the Worksite. Do not cut or damage tree roots. Do not disturb existing soils and grades around trees to remain without the written direction of the Engineer. Do not backfill soil over tree roots within the trees' driplines. Use hand tools and extreme care for all work required within driplines of existing trees. In addition to protection, the Contractor is responsible for ensuring trees receive proper watering and maintenance in accordance with horticultural standards.
- D. Submit a replacement plant list with proposed sizes and planting plan to the Engineer for review. Replacement plants species and proposed locations shall be reviewed by the Engineer. Typically replacement plants shall match the existing plants being replaced. However, the Engineer will make the final determination on plant species, sizes and locations. Replacement ornamental

planting shall conform to the requirements herein. Replacement plants within Town of Moraga property and private properties shall comply with Town standards and requirements.

PART 2 PRODUCTS

2.1 MATERIALS

- A. TREE PROTECTION-ZONE FENCING
 - 1. Fencing fixed in position and meeting the following requirements:
 - 2. Snow Fencing Protection-Zone Fencing: Orange plastic fencing, 4' height with steel stake posts with tie wires, hog ring ties, and other accessories for a complete fence system.
- B. MULCH
 - 1. Recycled chipped mulch, natural color.

PART 3 -EXECUTION

3.1 LANDSCAPE PRESERVATION

- A. Contractor to notify the Engineer of any and all work with impact existing trees, planting, and, irrigation services to areas within the property.
- B. Contractor shall coordinate irrigation controller schedules and services with the Engineer's maintenance personnel.
- C. Contractor shall provide irrigation water to all adjacent landscape areas which may be impacted by the construction of work. Temporary irrigation systems, hand watering, truck watering or other means may be required to provide water to plant material and lawn zones during the duration of work. All costs related to such work shall be borne by the contractor at no additional cost to the contract.
- D. Any landscape irrigation or planting which is impacted, damaged or destroyed during construction shall be fully replaced with equipment and plant material matching in size and type by the contractor as Landscape Restoration.

3.2 EXCAVATION

- A. General: Hand or air spade excavate at edge of Tree Protection Zones for grading, trenches and other soil disturbance adjacent to existing trees.
- B. No rototilling or other soil disturbance shall take place within Tree Protection Zones, before, during, or after demolition or construction, unless designated within construction documents.
- C. Trenching near Trees: Where utility trenches are required within or adjacent to Tree Protection Zones, air spade or hand excavate under or around tree roots or tunnel under the roots by drilling, auger boring, or pipe jacking. Do not cut large (e.g. 2 inches in diameter or greater) roots; cut only smaller roots that interfere with installation of utilities.

3.3 TREE PROTECTION

- A. Contractor to review locations of all existing trees and stake improvements and review grades, subgrades, excavations, tree roots with the project arborist and Engineer prior to the start of demolition. Adjustments to the layout of improvements may be required to protect the health of existing trees.
- B. At sites where the excavation has taken place near trees to remain, and many living roots remain exposed to the air, the Contractor shall cover the exposed roots within 2 hours with sand, soil, moist burlap or other means acceptable to the Project Arborist.
- C. Construction materials, debris, and supplies shall not be stored within the drip line or protective fencing area under any tree.
- D. Vehicles shall not be parked within the drip line or protective fencing area.
- E. Woodchips or another cushioning surface material approved by the Project Arborist shall be placed over areas where roots are present and construction traffic occurs.
- F. Where called for on the plans, place fences or other approved protective barriers around trees to be saved.
- G. The following practices are prohibited within Tree Protection Zones unless approved in writing by the Project Arborist and Engineer.
 - 1. Storage of construction materials, debris, or excavated material.
 - 2. Parking vehicles or equipment.
 - 3. Placement of outhouses
 - 4. Foot traffic.
 - 5. Erection of sheds or structures.
 - 6. Impoundment of water.
 - 7. Equipment wash down.
 - 8. Grubbing of soil surface to remove organic matter.
 - 9. Disposal of chemicals, petroleum products, or other detrimental substances.
 - 10. Excavation, grading or other soil disturbance unless otherwise indicated.
 - 11. Attachment of signs to or wrapping materials around trees unless otherwise indicated on plans.

3.4 ROOT PRUNING

- A. Tree roots greater than 3" in diameter and less than 12" below ground level shall not be cut without approval of the Project Arborist.

- B. Roots shall be cut clearly, as far from the trunk of the tree as possible. Root pruning shall be to a depth of 18".
- C. Root pruning shall be performed using a Vermeer Root Cutting Machine. Alternate equipment or techniques must be approved by the Project Arborist.
- D. Root pruning shall be completed prior to base or subgrade preparation, or to any excavation adjacent to the tree.
- E. Root Pruning
 - 1. Prior to root cutting air spade or hand dig a trench along the edge of the excavation facing the protected tree(s), to the depth of the excavation. The trench must be at least 12 inches wide. Cut exposed roots that need to be removed cleanly back to the trench wall with sharp pruning tools. Do not break, tear, chop, or slant the cuts. Do not use a backhoe or other equipment that rips, tears, or pulls roots. Heavy equipment may be used to continue soil work but the equipment must not contact the roots that have been cut at the edge of the trench, or any soil or roots on the tree-side of the trench.
 - 2. Exposed roots must be covered with 2 layers of natural burlap or organic mulch that is kept moist until backfilled. The exposed trench wall must be sprayed with water and thoroughly moistened with water prior to placement of burlap.
 - 3. Backfill as soon as possible according to requirements of Earthwork & Grading. Wet the backfill soil thoroughly as it is placed in the trench.

3.5 REGRADING

- A. Lowering Grade: Where new finish grade is indicated below existing grade around trees, slope grade beyond the protection zone. Maintain existing grades within the protection zone.
- B. Raising Grade: Where new finish grade is indicated above existing grade around trees, slope grade beyond the protection zone. Maintain existing grades within the protection zone.

3.6 DISPOSAL OF SURPLUS AND WASTE MATERIALS

- A. Disposal: Remove excess excavated material, displaced trees, prunings, trash and debris, and legally dispose of them off Owner's property.

END OF SECTION

SECTION 12 93 00

SITE FURNISHINGS AND ACCESSORIES

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. The scope of work outlined in this Section includes the following items of work, as detailed in these Contract Specifications, as shown on the Contract Drawings or reasonably implied therefrom and is not limited to the following items:
 - 1. BBQ Grills
 - 2. Trash and Recycling Receptacles
 - 3. Picnic Tables
 - 4. Utility Table
 - 5. Shade Structure

1.02 RELATED REQUIREMENTS

- A. These Contract Specifications are part of the Contract Drawings and shall include all labor, materials, equipment, reasonable incidentals, and services necessary for the execution of the Work installed complete in place.
- B. Refer to all other sections, determine the extent and character of related work, and coordinate all work to produce a complete, properly constructed product.

1.03 RELATED SECTIONS

- A. Section 32 13 16: Decorative Concrete Paving

1.04 REFERENCES AND STANDARDS

- A. Comply with applicable requirements of the following standards. Where these standards conflict with other specified requirements, the most restrictive requirements shall govern.
- B. Manufacturers Data and Recommended Installation Requirements
- C. Hot-Dipped Galvanized Finish:
 - 1. ASTM A123 Standard Specification for Zinc (Hot-Dipped Galvanized) Coating on Iron and Steel Products

1.05 SUBMITTALS

- A. Prepare digital pdf submittal package including all product representative information, manufacturers data, plans, details, finishes, dimensions, anchorage, installation details, space

requirements, options, physical color samples, warranties and maintenance requirements within fourteen (14) calendar days after Notice of Award.

- B. Submit shop drawings where noted to the Landscape Architect for approval before installing any manufactured items. Plans shall include dimensions, color, finishes and connection details.
- C. Shade Structure submittal shall include all items, drawings, details, connections, fasteners, footings, specifications, and calculations required for review and approval by the Town of Moraga to obtain a building permit.
- D. Submit catalog cuts, samples and manufacturers literature of all manufactured items in this section to the Landscape Architect for approval before installation.
 - 1. Provide color samples, brushouts, or charts for all items. Final colors to be selected by Landscape Architect and a sample submitted for approval.
- E. Contractor shall not begin any of the Work covered by a Shop Drawing, Data or Sample designated as revise and resubmit or rejected until a revision or correction thereof has been reviewed and returned.
- F. A Drawing, Data or Sample designated as revise and resubmit or rejected and requiring resubmittal shall be revised or corrected and resubmitted to the Project Manager no later than seven (7) calendar days after its return to Contractor.
- G. Neither the review nor the lack of review of any Shop Drawing, Data or Sample shall waive any of the requirements of the Contract, or relieve Contractor of any obligation thereunder.
- H. Approval of shop drawings does not relieve the Contractor of responsibility for any errors that may exist, because the Contractor is responsible for the dimensions and design of adequate connections and details and for satisfactory construction of all the Work.

1.06 DELIVERY, STORAGE, AND HANDLING:

- A. Deliver, store, and handle furnishings to prevent damage and deterioration.
- B. Stack assembled items off the ground.

1.07 PROJECT CONDITIONS:

- A. Provide sleeves, anchors, inserts, bolts, clips, and other items furnished under this Section and built in with work of other trades.
- B. No work shall be installed until finish, color samples and shop drawings for the work have been reviewed and approved in writing by the Landscape Architect and final grading and surfacing is completed.
- C. Verify that field measurements are as indicated on shop drawings.

1.08 QUALITY ASSURANCE

- A. References:
 - 1. American Society of Testing and Materials (ASTM)

2. American Welding Society (AWS)
3. American Institute of Steel Construction (AISC)

B. Field measurement: Verify drawing dimensions with actual field conditions. Inspect related work and adjacent surfaces. Report to the Owners Representative all conditions, which prevent proper execution of this work.

C. Shop assembly: Preassemble items in shop to greatest extent possible to minimize field splicing and assembly. Disassemble units only as necessary for shipping and handling limitations. Clearly mark units for reassembly and coordination of installation.

D. Insurance

1. Contractor shall meet the minimum insurance as specified by any manufacturer (such as exercise equipment) and provide certificates to the owner prior to construction.

E. Contractor Qualifications

1. Contractor shall have a minimum 5 years of specialized experience installing and/ or fabricating specific products, systems, structures, and amenities within this scope of work.
2. Contractor to provide a list of at least 3 installation projects of similar scope and size for verification and approval by the Owner.

PART 2 - PRODUCTS

2.01 GENERAL

- A. Products named are indicative of the features, form, finish, and quality of the furnishings desired. Products of manufacturers other than those named may be acceptable upon proof of equality.
- B. All products shall be new, delivered to the site in manufacturer's original containers, and protected at all times from damage during shipping, storage, and handling prior to and during installation.
- C. Provide sleeves, anchors, inserts, bolts, clips, and other items furnished under this Section and built in with work of other trades.
- D. All attachment hardware and expansion anchors shall be stainless steel and anti theft.
- E. No work shall be installed until finish, color samples and Shop Drawings for the work have been reviewed and approved in writing by the Engineer and final grading and surfacing is completed.

2.02 MANUFACTURED ITEMS

- A. BBQ Grills
 1. Accessible Grill: Per Plan

2. Large Grill: Per Plan
- B. Picnic Tables
 1. ADA Picnic Table: Per plan
 2. Picnic Table: Per Plan
- C. Trash & Recycling Receptacles: per plans
- D. Utility Table: Per Plan
- E. Shade Structure: Per Plan

2.02 MISCELLANEOUS MATERIALS

- F. All other materials for site elements shall be as specified on the plans and these specifications or as required by the mfr for installation.

PART 3 - EXECUTION

3.01 INSTALLATION

- A. For all products, specifically described below, or not, installation of products shall be as shown on the drawings, or according to manufacturer's instructions. If discrepancies are found, or if information is lacking, consult with Engineer immediately, prior to beginning the work.
- B. Coordinate in-ground installation of site furnishings with installation of concrete paving and other paving materials.
- C. Equipment and work shall include all miscellaneous attachments, materials and field adjustments as necessary to provide complete installation and meet final finish grade requirements.
- D. Coordinate delivery and installation of site furnishings with other site work. Avoid early installation that results in undue exposure to damage.
- E. Assemble and install site furnishings in accordance with approved shop drawings and manufacturer's printed instructions.
- F. Install all items plumb, and true to line and grade, accurately in location, alignment, and elevation free of rack, measured from established lines and levels.
- G. Install concrete footings in accordance with Section 32 13 13 – Decorative Concrete per manufacturer's recommendations, whichever is more stringent.
- H. Replace damaged furnishings; no patching or repair will be allowed.
- I. Assembled furnishings shall be firm, rigid, free of rattle, and provide maximum protection against tampering and vandalism.

- J. All excess excavation spoils not needed in the backfill effort shall be removed from the site.

**3.02 BBQ GRILLS, TRASH AND RECYCLING RECEPTACLES, PICNIC TABLES, AND
UTILITY TABLE**

- A. Install per manufacturer specification and detail. Epoxy set all anchors.

3.03 SHADE STRUCTURE

- A. Review all underground utility locations and footing locations prior to the installation of work.
- B. Install concrete footings in coordination with finish and grade of flat work.
- C. Install Shade Structure in accordance with manufacturer's specification and detail.

3.03 GUARANTEE

- A. At completion of project, Contractor shall provide Owner with written guarantee from each manufacturer identifying the nature of warranty for each product component.
 - 1. Provide warranty manuals
- B. Contractor shall provide Owner with pdf manuals identifying each piece of equipment on manufacturer's recommended maintenance program including, but not limited to, daily, weekly, and monthly check lists.
- C. Contractor to provide Owner with minimum of two (2) mfr repair kits of each type and color of paint used on apparatus with recommended surface preparation and application guidelines.

END OF SECTION

SECTION 31 10 00
CLEARING, GRUBBING AND MISCELLANEOUS DEMOLITION

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. The scope of work outlined in this Section includes the following items of work, as detailed in these Contract Specifications, as shown on the Contract Drawings or reasonably implied therefrom and is not limited to the following items:
 - 1. Demolition
 - a. Removal and Disposal of Miscellaneous Construction Items and Debris
 - b. Clearing and grubbing
 - c. Saw cutting
 - d. AC removal
 - e. Removal of footings
 - f. Removal of existing site furniture (tables and benches)
 - 2. Tree Removal
- B. The General Conditions of the Contract, including General and Special Provisions and General Requirements apply to the work in this section.

1.02 RELATED REQUIREMENTS

- A. These Contract Specifications are part of the Contract Drawings and shall include all labor, materials, equipment, reasonable incidentals, and services necessary for the execution of the Work installed complete in place.
- B. Refer to all other sections, determine the extent and character of related work, and coordinate all work to produce a complete, properly constructed product.

1.03 REFERENCES AND STANDARDS

- A. California Department of Transportation (Caltrans): Standard Specifications:
- B. CAL/OSHA
- C. Contra Costa County Clean Water Program Stormwater Manual

PART 2 - MATERIALS

2.01 EQUIPMENT

- A. Equipment shall be suitable for the work to be done and shall be in first-class condition. Equipment operators and workmen to be skilled in operations and to be supervised by a competent superintendent.

PART 3 - EXECUTION

3.01 EXAMINATION

- A. Prior to bid examine conditions affecting installation of new work.
- B. Discrepancies:
 - 1. If conditions are not as anticipated, immediately notify the Landscape Architect
 - 2. Do not proceed in areas of discrepancy until such discrepancies have been fully resolved.
- C. Time extensions or increase or decrease of costs resulting from such changes will be adjusted in the manner provided in the General Conditions.
- D. The contractor will provide saw cutting at hardscape limit of demolition

3.02 PREPARATION

- A. Review all demolition adjacent to, under the canopy, and/ or within the root zone of existing trees with the project Arborist and Landscape Architect.
- B. Conduct demolition operations to prevent injury to people and damage to adjacent buildings and facilities to remain. Ensure safe passage of people around selective demolition area.
 - 1. Erect temporary protection, such as walks, fences, railings, canopies, and covered passageways, where required by authorities having jurisdiction.
 - 2. Protect existing site improvements, appurtenances, and landscaping indicated to remain.
- C. Erect a plainly visible fence around drip line of individual trees or around perimeter drip line of groups of trees to remain.
- D. Where demolition, removal or rework occurs, take all necessary precautions to protect finished work from damage. Finished work damaged by operations under this contract shall be repaired or replaced to the acceptance of Town and Landscape Architect at no extra cost to the Contract.
- E. Clear and grub future planting and paved areas as shown on Plans or as specified herein. Grubbing shall include clearing the entire root systems of all plants, weeds, and grasses.
- F. Remove and stockpile all existing site furniture and signage as directed by the Construction Manager.

G. Remove and dispose of footings, cubs, paving and miscellaneous deleterious materials, such as, asphalt, aggregate base, concrete, as required for the placement of improvements and where shown on plans. Contractor shall finish off edges at conforms as directed by the Landscape Architect.

3.03 POLLUTION CONTROLS

- A. Use water mist, temporary enclosures, and other suitable methods to limit the spread of dust and dirt. Comply with environmental protection regulations of authorities having jurisdiction.
 - 1. Do not use water when it may damage construction indicated to remain or create hazardous or objectionable conditions, such as ice, flooding, and pollution.
- B. Remove and transport debris in a manner that will prevent spillage on adjacent surfaces and areas.

3.04 SELECTIVE DEMOLITION, ALTERATIONS

- A. Demolish and remove existing construction only to the extent required by new construction and as indicated. Use methods required to complete Work within limitations of governing regulations.
- B. Cut, drill, alter, remove, or temporarily remove and replace existing construction as necessary for performance of work under the contract. Work that is replaced shall match similar existing work.
- C. Unless otherwise noted on the drawings do not alter any site structure without authorization of the Landscape Architect.
- D. Repair demolition in excess of that required, at no cost to the Town.
 - 1. Work remaining in place which is damaged or defaced during this contract shall be restored to the condition at time of award of contract.
- E. If removal of existing work exposes discolored or unfinished surfaces, or work out of alignment, refinish such surfaces or replace the material as necessary to make contiguous work uniform.
- F. Neatly cut openings and holes plumb, square, and true to dimensions required. Use cutting methods least likely to damage construction to remain or adjoining construction.
 - 1. To minimize disturbance of adjacent surfaces, use hand or small power tools designed for sawing or grinding, not hammering and chopping. Temporarily cover openings to remain.
- G. Dispose of demolished items and materials promptly. On-site storage or sale of removed items is prohibited
- H. Cut finish surfaces such as concrete, masonry, asphalt, by methods to terminate surfaces in a straight line at a natural point of division.
- I. Where new work joins existing construction, ensure that joinings are weather tight, sound and even in appearance.

3.05 BELOW-GRADE DEMOLITION

- A. The project arborist shall oversee all below grade demolition underneath the drip lines of existing trees to remain. All Demolition work within the drip lines of trees to remain shall be by hand. The project arborist may approve the use of equipment upon review.
- B. Footings, foundation walls, below-grade construction and concrete slabs on grade including utility lines shall be demolished and removed to a depth which will not interfere with new construction but shall not be less than 12 inches below existing ground surface or future ground surface, whichever is lower.
- C. Tree Roots shall be removed to a minimum depth of 12". Tree Stumps shall be ground to a minimum depth of 24".
- D. Below-grade areas and voids resulting from demolition of structures shall be completely filled.
- E. All fill and compaction shall be in accordance with Section 312300, "Utility Earthwork."
- F. All fill and compaction surfaces shall be graded to meet adjacent contours and to provide flow to surface drainage structures, or as shown on the Drawings.
- G. Where installation of new utilities requires partial removal or demolition of an existing utility, the existing utility shall be removed to sound material. Pipes to be demolished that require no future connection shall be removed to the extent required and sealed and capped. Sanitary sewer laterals shall be removed as required and a new sewer clean out shall be installed in accordance with the Standard Specifications and Details. Pipes to be demolished that require a connection shall be removed to the extent required to install the new connection. Pipe sections shall be removed either by sawcutting, removing a complete pipe section to an existing joint, or other adequate means which results in a clean joint acceptable to the Construction Manager..

3.06 DISPOSITION OF MATERIALS

- A. Remove debris as it accumulates, except as otherwise specified. Do not store or permit debris to accumulate on the site. If contractor fails to remove excess debris promptly, the Town reserves the right to cause same to be removed at Contractor's expense.
- B. Materials requiring removal and demolition shall become the property of the contractor and shall be removed completely from site, unless noted otherwise on plans, directed by the Landscape Architect and shall be legally disposed of at an approved site outside the Town limits.
- C. If unforeseen items are encountered during clearing and demolition work, the Contractor shall notify the Construction Manager prior to removal or demolition.
- D. The CONTRACTOR shall clean and sweep daily all pathways, roads, parking and areas affected by its operation.

END OF SECTION

SECTION 32 13 16

DECORATIVE CONCRETE

PART 1 - GENERAL

1.01 SECTION INCLUDES

A. The scope of work outlined in this Section includes the following items of work, as detailed in these Contract Specifications, as shown on the Contract Drawings or reasonably implied therefrom and is not limited to the following items:

1. Aggregate Base
2. Concrete Paving
3. Concrete Curb

1.2 RELATED REQUIREMENTS

- A. These Contract Specifications are part of the Contract Drawings and shall include all labor, materials, equipment, reasonable incidentals, and services necessary for the execution of the Work installed complete in place.
- B. Refer to all other sections, determine the extent and character of related work, and coordinate all work to produce a complete, properly constructed product.

1.3 RELATED SECTIONS

- A. Section 12 93 00 Site Furniture & Accessories
- B. Section 31 00 00 Clearing, Grubbing and Misc Demo.

1.4 QUALITY CONTROL AND ASSURANCE

- A. Materials and methods of construction shall comply with the following standards:
 - 1. ASTM International, (ASTM):
 - 2. ASTM C309 – Liquid Membrane-Forming Compounds for Curing Concrete.
 - 3. ASTM C979 – Pigments for Integrally Colored Concrete.
 - 4. American Concrete Institute, (ACI):
 - 5. Specification for Measuring, Mixing and Placing Concrete, (ACI 304)
 - 6. Specification for Hot Weather Concreting (ACI 305)
 - 7. Specification for Cold Weather Concreting (ACI 306)

8. Guide to External Curing of Concrete (ACI 308)
9. Specification for Formwork for Concrete (ACI 347)
10. State Standard Specifications, California Department of Transportation.
11. American National Standards Institute, (ANSI).
12. Bay Area Air Quality Management District, Sandblasting Guidelines.

B. Inspection by Owner and Other Governing and Regulatory Authorities: Allow the Owner and other governing and regulatory authorities to perform testing and inspection of materials and practices associated with construction within their jurisdiction on the Worksite during business hours for the purpose of ensuring that the Work is in compliance with the requirements of the Contract Drawings, Contract Specifications, and other local, state and federal laws and regulations.

C. Contractor Quality Control:

1. Sampling, Testing and Inspection:
2. Hire an independent Quality Control Testing Firm to perform sampling, testing, and inspections in accordance with the provisions herein.
3. Wherever it is specified herein that sampling, testing, or inspection shall be performed by the Contractor, it shall be understood to mean that said sampling, testing, or inspection shall be performed by the Quality Control Testing Firm.
4. Cooperate with and notify the Owner at least 48 hours in advance of sampling, tests and inspections, being performed by the Quality Control Testing Firm. The Owner may elect to observe these procedures. Provide samples and facilities for inspection to the Owner without extra charge if requested.
5. The Quality Control Testing Firm shall collect samples of materials for testing in accordance with the provisions outlined herein and as directed by the Owner.

D. Landscape Architect Quality Assurance:

1. The Owner or Owner's representative will monitor the implementation of the Contractor's quality control programs through observation, inspection, sampling and testing as deemed necessary.

E. All manufacturer's specifications and details shall be included as part of the Contract Documents. Contractor shall review all manufacturer requirements, standards, specifications and details prior to bid and include all mix designs, additives, and incidentals required.

F. Installing contractor shall assign experienced mechanics to this project, of which one will serve as lead mechanic for the complete duration of the project.

- G. Supervision: On site Decorative Concrete foreman must have experience installing Landscape Architectural Cast-in-place concrete. Submit project list of installer qualifications, demonstration of square footage installed, number of projects, and contact information to verify experience. The supervising foreman shall be onsite during all decorative concrete placement and finishing work for the complete duration of the project.
- H. Maintain field records of time, date of placing, curing and removal of forms of concrete in each portion of work.
- I. Samples:
 - 1. Sample panel: Before ordering material for concrete paving, provide sample panels, minimum 2' x 2' of each color and finish, using specified materials. Show color, texture, pattern, edging, and joint treatments. Contractor to provide additional samples at no additional cost to contract until all colors and finishes have been approved by the Landscape Architect.
 - 2. Approved samples will not be a portion of the work and will remain in place throughout the construction period for comparison. Location as selected by the contractor and approved by the Landscape Architect. Contractor will be required to provide additional panels as necessary, until approved.
 - 3. Sample curb: Before ordering material for concrete paving, provide sample panel, minimum 3-foot section of curb, using specified materials. Show color, texture, pattern, edging, and joint treatments. Contractor to provide additional samples at no additional cost to contract until all colors and finishes have been approved.
 - 4. Approved samples will not be a portion of the work and will remain in place throughout the construction period for comparison. Location as selected by the contractor and approved by the Landscape Architect. Contractor will be required to provide additional panels as necessary, until approved.

1.5 SUBMITTALS

- A. General: Refer to Section 01 33 00 – Submittal Procedures for submittal requirements and procedures.
- B. Submit concrete mix designs for each concrete type. Obtain approval before placing concrete.
 - 1. Pedestrian and Vehicular flatwork Concrete
- C. Product data:
 - 1. Submit complete materials list of items proposed for the work. Identify materials source.
 - 2. Submit admixture, curing compound, retarder, and accessory item product data, if used.
 - 3. Submit material certificates for aggregates, fly ash, slag, reinforcing, dowels, sealants, diamond dowels, and joint fillers.

4. Submit manufacturer's product data and specifications for all accessories and incidentals.

D. Submit concrete delivery tickets. Show the following:

1. Batch number.
2. Mix by class or sack content with maximum size aggregate.
3. Admixtures.
4. Slump.
5. Time of loading.

E. Submit concrete test reports.

F. Trial batch shrinkage tests, when required as specified herein, shall show conformance with the "Drying Shrinkage" requirements specified in Article 2.01I.

G. Contractor shall provide Concrete Protection Plan to the District for review and approval for any work or construction access on or thru the limits of work or adjacent hardscape areas to ensure damage of new or existing work is prevented as noted within Article 3.7. Damaged concrete shall be considered Defective Concrete as specified in Article 3.8 herein.

1.6 DELIVERY, STORAGE AND HANDLING

- A. Work notification: Notify Landscape Architect and Owner at least 24 hours prior to installation of concrete.
- B. Establish and maintain required lines and grade elevations. All concrete shall slope to drain with no ponding of water.
- C. Do not install concrete work over wet, saturated, muddy, or frozen subgrade.
- D. Do not install concrete when air temperature is below 40 degrees F. Use of calcium chloride, salt, or any other admixture to prevent concrete from freezing is prohibited.
- E. Protect adjacent work.
- F. Provide temporary barricades and warning lights as required for protection of project work and public safety.

PART 2 - PRODUCTS

2.01 MATERIALS

- A. Portland Cement: ASTM C150, Type II, natural color, unless otherwise noted.

B. Supplementary Cementitious Materials (SCM):

1. Fly Ash: ASTM C618, Type F. Combined Fly ash and slag shall equal no more than 25% total.
2. Slag Cement: ASTM 989, GR 100 or GR 120. Combined Fly ash and slag shall equal no more than 25% total.
3. Metakaolin: ASTM C618, Type N.
4. MetaMax by BASF Kaolin (Part of BASF Corporation) (or approved equal)

C. Aggregate: Provide minimum 50% ASTM C33 normal weight aggregates, 3/4" maximum size, clean, uncoated crushed stone or gravel coarse aggregate free of materials which cause staining or rust spots; fine aggregate shall be clean natural sand.

D. Recycled Aggregate: Provide minimum 30%, maximum 50% Class 2 aggregate subbase, $\frac{3}{4}$ " size, meeting Caltrans Section 25 and Section 26 of the standard specifications.

E. Water: ASTM C 1602, Clean, fresh, and potable.

F. Chemical admixtures: ASTM C494.

1. BASF Corporation – (800) 628-9990 (or approved equal)
2. Water-Reducing Admixtures
 - a. MasterPozzolith 322 by BASF (or approved equal)
 - b. MasterGlenium 7500 by BASF (or approved equal)
3. Viscosity-Modifying Admixture
 - a. MasterMatrix VMA 362 by BASF (or approved equal)
4. Superplasticizer
 - a. MasterGlenium (or approved equal)

G. Latex Portland Cement Grout: ANSI A108.10. Color of grout to blend with stone veneer. Submit sample for review.

H. Concrete Admixtures and Color Additives: Color per Contract Drawings, as approved by the Landscape Architect.

I. Drying Shrinkage of Concrete:

1. A trial batch of the proposed (mix design) concrete shall be prepared using the aggregates, cement, and admixture proposed for this work. From the trial batch, three specimens (4 inches by 4 inches by 11 inches) for determining "Drying Shrinkage" shall be prepared, cured, dried, and measured. Shrinkage of specimens for cast-in-place

concrete shall not exceed 0.040 percent when measured in accordance with ASTM C157/C157M and ASTM C490/C490M after 21 days of drying.

2.2 MIXES

- A. Provide Class A ready-mixed concrete. Batch mixing at site not acceptable.
 - 1. For all decorative site concrete: Use Portland Cement Concrete containing not less than 564 pounds of cementitious materials cubic yard, with a 28 day compressive strength of not less than 3000 p.s.i. Shrinkage shall be in accordance with Section 2.1.I.1 above.
- B. Indicate water added to mix at Worksite on each delivery ticket. Water content shall be 0.5. Show quantity of water added. Site water tempered mixes exceeding the specified slump range of 3.5" maximum will be rejected as not complying with specification requirements.
- C. Cement truck delivery shall not inject additional water to the mix design after batching

2.3 ACCESSORIES

- A. Granular base: Class II Aggregate Base.
- B. Forms: Wood or metal of sufficient strength to resist concrete placement pressure and to maintain horizontal and vertical alignment during concrete placement. Provide forms straight, free of defects and distortion, and height equal to full depth of concrete work.
 - 1. Provide 2" nominal thickness, surfaced plank wood forms for straight sections. Use flexible metal, 1" lumber or plywood forms to form radius bends.
 - 2. Lumber to be new #2 grade or better. Do not use used form lumber.
 - 3. Perform form layout with a digital electronic transit for line layout accuracy.
 - 4. Allow forms to remain in place long enough to allow concrete to set properly. Remove forms when appropriate.
- C. Joint Filler: ASTM D1751, premolded non-extruding asphalt-impregnated fiberboard, thickness indicated.
- D. Curing compound: ASTM C309, non-yellowing, non-staining liquid membrane-forming type containing a fugitive dye. Chlorinated rubber compounds not acceptable for exterior use.
 - 1. BASF Corporation; MasterKure 1315 WB – (800) 243-6739
 - 2. Admixtures Inc.; Colorful Clear Curing Compound – (626) 357-3263 or <http://admixtures.home.att.net/>
 - 3. Cure & Sealer Lithocrete® Sealer or HLQ 125

- E. Joint Sealants: Two-component polysulfide or polyurethane elastomeric type complying with FS TT-S-00227, self-leveling, designed for foot traffic. Provide vehicular rated sealant in all vehicular areas. Colors shall match paving.
- F. Reinforcing steel: ASTM A615, A616, or A617, Grade 60, new domestic deformed steel bars
- G. Steel Bar Mats - Deformed Bars: ASTM A184/A184M, using ASTM A706 deformed bars, sizes and spacings of members as indicated, welded or clipped at intersections.
- H. Accessories: Provide reinforcement accessories, consisting of bar supports, spacers, hangers, chairs, ties, and similar items as required for spacing, assembling, and supporting reinforcement in place. Conform with CRSI referenced standards and the following requirements:
 - 1. For footings, grade beams, and slabs on grade, provide supports with precast concrete or mortar bases or plates or horizontal runners where wetted base materials will not support chair legs.
- I. Form release agent: Non-staining chemical form release agent free of oils, waxes, and other materials harmful to concrete.
 - 1. BASF Corporation; "MasterFinish RL" Series – (800) 628-9990
- J. Reveals/Chamfer strips: Shall be plastic or polyvinyl coated for easy release. Available from Barker Steel, www.barker.com, or approved equal.
- K. Provide all stirrups, ties, anchors, shown or required to be cast into precast members.
- L. Bolts, Nuts, and Washers: ASTM A307. Provide hot-dip galvanized fasteners for exterior use. Paint to match adjacent metal work.
- M. Glare Reducing Agents (for all standard gray concrete work)
 - 1. Lampblack in dry form, in accordance with the requirements of ASTM " Standard Specification for Lampblack", Designation D 209, in the proportion of from $\frac{1}{2}$ to $\frac{3}{4}$ pound over cubic yard of concrete.
 - 2. An approved liquid or semi-paste black colorant intended for use integrally in concrete mixes. The proportion required, generally from 10 to 40 ounces liquid measure per cubic yard of concrete, may be affected by the colorant used. Curing in this case shall be by the pigmented curing compound method.
 - 3. All visible Standard Gray concrete work shall include Lampblack as indicated above.
- N. Sealer
 - 1. Repello, non gloss sealer by Scofield or approved equal

PART 3 - EXECUTION

3.01 INSPECTION

- A. Review existing tree locations, and roots with project arborist in accordance with Section 01 56 39 Landscape Preservation.
- B. Coordinate equipment access and protect all surfaces, planting, and irrigation to be remain. Damaged work to be replaced by the contractor at no additional cost to the contract.
- C. Provide fencing protection to all work areas until final acceptance.
- D. Examine subgrades and installation conditions. Do not start concrete work until unsatisfactory conditions are corrected.
- E. Review all Contract Drawings and Town Standards for items which require coordination.
- F. Contractor and Landscape Architect to field review location, orientation, and elevations of all utility boxes, structures, drainage elements, and footings with the proposed grades, walls, score pattern and joint layouts prior to the placement of work. Correct any deficient items prior to proceeding with Decorative Concrete work.

3.2 PREPARATION

- A. Prepare subgrade in accordance with the Earthwork & Grading, Section 32 91 19.
- B. Provide compacted base material as shown on Contract Documents. Compact base to 95% of the maximum dry density throughout in accordance with ASTM D1557.
- C. Remove loose material and debris from base surface before placing concrete.
- D. Install, align, and level forms. Stake and brace forms in place. Maintain following grade and alignment tolerances:
 1. Top of form: Maximum 1/8" in 10'-0".
 2. Vertical face: Maximum 1/2" in 10'-0".
- E. Coat form surfaces in contact with concrete with form release agent. Clean forms after each use and coat with form release agent as necessary to assure separation from concrete without damage.
- F. Install, set, and build-in work furnished under other specification sections. Provide adequate notification for installation of necessary items.
- G. Coordinate and provide for drains, perforated pipes, sleeves and conduits as required for all work.

3.3 PLACING REINFORCEMENT

- A. Place all reinforcement as shown on the Contract Drawings. Place accurately and securely fasten and support reinforcement to prevent displacement before or during pouring. Hang footing bars from forms. Support reinforcing with suitable metal cradles.
- B. Clean, bend and place reinforcement in accordance with current requirements of the ACI Manual of Concrete Practice.
- C. Dowels: Provide dowels where indicated or required for connecting construction and for maintaining structural and reinforcement continuity. Dowels shall be tied securely in place before concrete is deposited. Provide additional bars for proper support and anchorage where required. Do not bend dowels after embedment.
 - 1. Dowels shall consist of $\frac{1}{2}$ " diameter smooth steel dowels 18-inches long installed centered on the joint 9-inches into each connecting slab. Dowels should have Architect approved dowel grease applied on one side of the joint. If one side is drilled, the borings should clean of all debris and dust from drilling, dowel should be installed and bonded to the hardened concrete with an Architect approved epoxy system, the boring shall be oversized as appropriate for the epoxy and size of smooth dowel. Borings shall be inspected and approved by Architect prior to installation of epoxy or dowel. Boring shall be centered in slab and free of cracking, spalling, or other deleterious defects.
- D. Reinforcement Splices:
 - 1. Reinforcing bars – Per details

3.4 INSTALLATION

- A. Concrete placement:
 - 1. Contractor shall provide the appropriate means and methods of construction to adjust the area, limits, and extent of concrete placed as required to prevent Defective Concrete work.
 - 2. Comply with ACI 304 "Recommended Practice for Measuring, Mixing, Transporting, and Placing Concrete", and as specified.
 - 3. Protect concrete from physical damage or reduced strength due to weather extremes during mixing, placing, and curing. In cold weather comply with ACI 306, "Standard Specification for Cold Weather Concreting". In hot weather comply with ACI 305, "Standard Specification for Hot Weather Concreting".
 - 4. Moisten base to provide a uniform dampened condition at the time concrete is placed. Verify structures are at required finish elevation and alignment before placing concrete.
 - 5. Place and spread concrete to the full depth of the forms. Use only square-end shovels or concrete rakes for hand-spreading and consolidating operations to prevent segregation of aggregate and dislocation of reinforcement.

6. Place concrete in a continuous operation between expansion joints. Provide construction joints where sections cannot be placed continuously.
7. Place concrete as indicated on the Contract Drawings in one course, monolith construction, for the full width and depth of concrete work.
8. Strike-off and bull-float concrete after consolidating. Level ridges and fill voids. Check surface with a 10'-0" straightedge. Fill depressions and refloat repaired areas. Darby the concrete surface to provide a smooth level surface ready for finishing.

B. Joints:

1. Provide expansion joints using premolded joint filler at concrete work abutting curbs, walls, structures, walks, utility boxes and other fixed objects.
2. Locate expansion joints as indicated or at a distance at 20' maximum, where paving patterns collide, between existing and new work, between pedestrian and vehicular paving, around all light post foundations and around all structural foundations.
3. Coordinate all expansion joints with interlocking paver fields and fixed objects.
4. Install joint fillers full-width and depth of joint. Recess top edge below finish grade for joint sealants.
5. Provide joint fillers in single lengths for the full slab width, whenever possible. Fasten joint filler sections together when multiple lengths are required.
6. Protect the top edge of the joint filler during concrete placement.
7. Brooming. After the curing period, expansion joints shall be carefully cleaned and filled with approved joint sealant to just below adjacent paved surface in such a manner as to avoid spilling on paved surfaces or overflow from joint.

C. Finishes:

1. Broom Finish: Shall be obtained by drawing a stiff bristled broom across a floated finish. Direction of brooming to be perpendicular to direction of work or otherwise shown on Contract Drawings.

D. Curing:

1. Cure concrete with a clear, non-staining liquid membrane-forming compound. Spray apply in accordance with manufacturer's recommended coverage rate. Apply curing compound immediately after completing surface finish.
2. After Concrete is placed, cure concrete for a minimum of seven (7) days without foot traffic and a minimum thirty (30) days without vehicular traffic. If a curing compound is required, refer to Section 2.03 of this specification for acceptable curing compounds or install a moisture retaining, non-staining, non-woven, curing cover and maintain sufficient moisture under cover to provide for 100% humidity conditions at concrete

surface for a minimum of 7 days. Cover shall be reflective in nature to prevent excessive heat build up under cover and allow for optimal curing conditions.

E. Sealer:

1. All concrete paving areas under tables shall be protected with sealer. Install per manufacturer specification and details.

3.5 FIELD QUALITY CONTROL AND ASSURANCE

- A. Provide slump test on first load of concrete delivered each day and whenever requested due to changes in consistency or appearance of concrete.
- B. The Quality Control Testing Firm shall perform field quality control as deemed necessary.
- C. Landscape Architect Quality Assurance:
 1. The Owner's representative will monitor the implementation of the Contractor's quality control programs through observation, inspection, sampling and testing as deemed necessary.
 2. Failure of the Owner's representative or Landscape Architect to detect defective work or material shall not prevent later rejection when such defect is discovered, nor shall it obligate the Landscape Architect for final acceptance.

3.6 TOLERANCES

- A. Comply with ACI 117, "Specifications for Tolerances for Concrete Construction and Materials"

3.7 PROTECTION

- A. Protect concrete work from public access, and damage due to vandalism, construction and vehicular traffic until Final acceptance. Exclude construction and vehicular traffic from concrete pavements for at least 28 days.
- B. Protection: Protect all concrete work items from chipping, spalling, cracking, or other damage until the Work is accepted by the Landscape Architect.
- C. Concrete work subject to traffic shall be heavily protected by the contractor as required to ensure damage does not occur. Damaged concrete shall be considered Defective Concrete as specified in Article 3.8 herein.

3.8 DEFECTIVE CONCRETE

- A. Concrete work which does not meet the Contract Specifications or Contract Drawings shall be considered defective concrete.

- B. Color and finish of all concrete work shall match. Inconsistent color, and finishing shall be considered defective concrete.
- C. All walls shall be plumb, straight with top of wall held level. Walls which are not plumb, straight, or level shall be considered defective concrete.
- D. All joints shall be straight and true. Joints which are not straight shall be considered defective concrete.
- E. Concrete work which ponds, does not conform to ADA requirements, does not match grading, is of poor finish, has poor scoring depth, map cracking, chipped, cracked, or otherwise deemed non acceptable by the Landscape Architect shall be considered defective concrete.
- F. Defective concrete shall be removed and repaired or replaced as directed by the Landscape Architect, at no added expense to the Contract.
 - 1. Landscape Architect's authorization for the Contractor to repair defective concrete work does not provide an acceptance of defective concrete work. All final repair work that does not meet the approval of the Landscape Architect shall be rejected, removed and replaced at no additional cost to the contract.
 - 2. In general, minor defective work may be repaired by use of dry pack. If defective work is serious or affects the strength of the structure or the appearance, the Landscape Architect may require the removal and replacement of the portion or all of the work.
 - 3. Immediately after removing forms, all concrete surfaces shall be inspected any poor joints voids, rock pockets, tie holes, except as specified, etc., shall be patched at once, but not until the surfaces have first been reviewed by the Landscape Architect. Submit patching mixture and method proposed for use, for review prior to commencing work.
 - 4. Repaired or Replaced work shall match existing work. Work which does not match shall require full removal and replacement.
 - 5. All labor, materials, equipment, incidentals, and work related to the repairs or replacement of Concrete work shall be done at no additional cost to the Contract.

3.9 CLEANING

- A. Perform cleaning during installation of the work and upon completion of the work. Remove from site all excess materials, debris, and equipment. Repair damage resulting from concrete operations.
- B. Sweep concrete sidewalks and pavement; wash free of stains, discoloration, dirt, and other foreign material immediately prior to final acceptance.

END OF SECTION

SECTION 32 91 19
EARTHWORK AND GRADING

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Section Includes
 - 1. Grading
 - a. Rough grading including over excavation and compaction.
 - b. Finish grading of the site.
 - c. Excavation and backfill for all footings, structures, walls, etc. and compaction.
 - d. Stockpiling and placing soil.
 - e. Soil compaction as required.
 - f. Protective measures.
 - g. Dust abatement.
 - h. Obtaining construction water.
- B. These Contract Specifications are part of the Contract Drawings and shall include all labor, materials, equipment, reasonable incidentals, and services necessary for the execution of the Work installed complete in place.

1.02 RELATED REQUIREMENTS

- A. These Contract Specifications are part of the Contract Drawings and shall include all labor, materials, equipment, reasonable incidentals, and services necessary for the execution of the Work installed complete in place.
- B. Refer to all other sections, determine the extent and character of related work, and coordinate all work to produce a complete, properly constructed product.

1.03 RELATED SECTIONS

- A. Section 01 56 39 Landscape Preservation
- B. Section 32 13 16, Decorative Concrete

1.04 REFERENCES AND STANDARDS

- A. American Society for Testing and Materials (ASTM):
 - 1. C33: Concrete Aggregates.
 - 2. D1557: Moisture Unit Weight Relations of Soils and Soil Aggregate Mixtures.
- B. California Code of Regulations (CCR), Title 24, Part 2-Basic Building Regulation, Chapter 24-Excavations, Foundations, and Retaining Walls.

- C. California Department of Transportation (Caltrans): Standard Specifications.
- D. CAL/OSHA, Title 8.
- E. Contra Costa County Clean Water Program Stormwater Manual
- F. California's Construction Stormwater General Permit

1.05 SITE CONDITIONS

- A. General:
 - 1. The Contractor shall so conduct his operations and schedule his cleanup so as to cause the least possible obstruction and inconvenience to public traffic, pedestrians, and adjacent buildings.
 - 2. Protect open excavations, trenches, and the like with fences, covers, and railings as required to maintain safe pedestrian and vehicular traffic passage.
 - 3. Prevent erosion of freshly graded areas during construction and until such time as permanent drainage and erosion control measures have been installed.
 - 4. Fill material shall be temporarily stockpiled in an orderly and safe manner in a location approved by the Town.
 - 5. Bench marks, monuments, signs, and other reference points shall be maintained; if disturbed or destroyed, they shall be replaced by the Contractor as directed by Program Manager.
 - 6. Earthwork operations shall be conducted so as to prevent windblown dust and dirt from interfering with the surrounding normal operations. Contractor shall assume liability for all claims related to windblown dust and dirt.
 - 7. Water shall be applied in conformance with applicable provisions of Section 17 of the Caltrans Standard Specifications and with Section 1590 (e) of CAL/OSHA, Title 8.
 - 8. In the event irrigation lines are discovered passing through the project area, these lines shall be reconnected or abandoned to the satisfaction of the Town Representative.
 - 9. The Contractor shall be responsible to provide to the State Water Resources Control Board (SWRCB), all documentation necessary, to obtain the National Pollutant Discharge Elimination System (NPDES) Permit.
- B. Environmental Requirements: When unfavorable weather conditions necessitate interrupting filling and grading operations, areas shall be prepared by compaction of surface and grading to avoid collection of water. Adequate temporary drainage shall be provided to prevent erosion. Appropriate erosion and sediment control measures to prevent any erosion or discharge of sediments or construction materials to creeks, streams or any portion of the Town's storm drainage system (MS4) shall be installed and maintained in conformance with the Contra Costa Clean Water Program standards, the San Francisco Bay Area Municipal Regional Permit, California's Construction Stormwater General Permit, and any applicable federal, State or local regulations. After interruption, compaction specified in last layer shall be reestablished before resuming work.

1.06 SUBMITTALS

- A. Imported Materials: Samples of all proposed imported materials, minimum 40 pounds, tagged with source location and supplier shall be submitted to the Landscape Architect at least 15 days prior to import. Materials shall not be imported to job site without written approval by the Landscape Architect.
- B. Erosion and Sediment Control Plan: An Erosion and Sediment Control Plan (ESCP) shall be submitted to the Landscape Architect at least 15 days prior to any ground disturbing activities occurring. Materials shall not be imported to job site without written approval by the Landscape Architect. If the project is regulated under the State's Construction Stormwater General Permit, prepare and submit all required documentation to the State Water Board's Stormwater Multi-Application & Report Tracking System (SMARTS) website. A SWPPP may be submitted to the Landscape Architect in lieu of an ESCP.

1.07 WATER

- A. Contractor shall make arrangements with the Town and / or local Water Department to obtain construction water.

PART 2 - PRODUCTS

2.01 FILL MATERIALS

- A. General: Fill material shall be approved by the Landscape Architect. Excavated materials from the site may be used if approved. Imported fill, where required, shall be a nonexpansive and predominantly granular soil or soil-rock mixture which shall have a plasticity index of 12 inches or less and is free from organic matter and deleterious substances, and which does not contain materials over 3 inches in greatest dimension. The material shall contain sufficient clay binder to allow for stable foundation excavations.
- B. Backfill Material Requirements-Retaining Walls: Except for drain rock, backfill material for use behind retaining walls shall be approved excavated on-site material consisting of a low- plasticity mixture of sand, gravel, and clay or imported fill.
- C. Rock Course:
 - 1. CalTrans Class 2 Aggregate Base 3/4-Inch

PART 3 - EXECUTION

3.01 EXCAVATION

- A. All Earthwork and Grading including but not limited to limits of grading, depths of excavation, compaction, subgrade preparation, fill, swales, and grades to be reviewed by the Project Arborist and Landscape Architect prior to the commencement of construction. All directions and requirements for the preservation of existing trees shall be made in writing.

B. Contractor shall export all excess site soil as needed. Exporting shall include excavation, removing, hauling, and disposing of soil in a legal manner off site. Contractor shall pay all fees and charges to remove export soil. Area to receive fill where landscape is to occur is to receive topsoil from excavated area.

C. General:

1. Supports required for the sides of excavations or for protection of adjacent existing improvements shall be provided and maintained by the Contractor. The adequacy of such systems shall be the complete responsibility of the Contractor.
2. Earth and rock, regardless of character and subsurface conditions, shall be excavated to depths shown on Drawings and to the neat dimensions of the footings wherever practicable, to permit pouring of footings without use of side forms, except at slab perimeters.
3. Large rocks, pieces of concrete or other obstructions, if encountered during the excavation/scarifying operations, shall be removed and disposed of.
4. Where footing excavation is too deep, backfill shall be concrete. Where footings are overdug laterally, sideforms shall be employed for backfill with rock fill or concrete backfill shall be used (Contractor's option).
5. Where forming is required, only that excavation necessary to permit placing and removal of forms shall be done.
6. Bottoms of all footings and foundations trenches shall be subject to inspection by the Landscape Architect. Corrective measures as directed by the Landscape Architect shall be executed promptly.
7. Pavement restoration shall be in kind and in accordance with Town standards
8. The base course for permanent asphalt concrete surface restoration shall be Class II Aggregate Base, equal in depth to the existing pavement structural section, but not less than four (4) inches in depth.
9. The wearing surface for permanent surface restoration shall be asphalt concrete equal in thickness to the existing pavement but not less than two (2) inches in depth. The asphalt concrete shall be Type A HMA Asphalt Concrete, 3/8" aggregate, with PG 64-10 or better asphalt oil, in accordance with Town Standards and as directed by the Landscape Architect.
10. Tack Coat to be per CalTrans standard.
11. All asphalt joints to be coated a minimum of 6 inches to each side.

D. Removal of Excess Excavated Material: Excess material shall be removed by the Contractor off the site in a legal manner and to the satisfaction of the Landscape Architect.

E. Moisture Conditioning and Recompaction of Surface Soils:

1. After the site has been cleared and stripped of debris, surface vegetation and organic laden topsoil, and any required excavations have been performed, the surface soils in these areas shall be recompacted. The recompaction shall consist of ripping the upper 12 inches, moisture conditioning the soils to at least two percent above optimum, and compacting them to at least 95 percent relative compaction as determined by ASTM Test Designation D1557.
2. Compaction shall be performed using approximately sized compaction equipment such as a self-propelled compactor. Additional fill meeting the requirements presented in Section A-4 Fill Placement and Compaction can be placed, if required, after the surface soils are recompacted.

- 3. In order to achieve satisfactory compaction in the subgrade and fill soils, it may be necessary to adjust the soil moisture content at the time of construction. This shall require that water be added and thoroughly mixed into any soils which are too dry or that scarification and aeration be performed in any soils which are too wet.
- 4. It shall be anticipated that the aeration or “drying out” of wet soils prior to compaction may require repeated regular scarification and “turning over” of the soils during dry weather in order to achieve moisture contents suitable for compaction. During these procedures the soils shall be protected from the effects of wet weather condition.

F. Over-excavation and Backfill of Subgrade Soils (if required): If soft/wet subgrade soils are encountered beneath planned structural improvements such as slabs or foundations, these soils shall be removed down to stable soils, or alternatively to a maximum depth of approximately 18 inches. After the exposed subgrade soils are recompacted, the over-excavated areas shall be refilled in thin lifts with Class 2 aggregate baserock compacted to at least 95 percent relative compaction in accordance with the requirements given below for Landscape Architected fill. The use of a stabilizing fabric, such as Mirafi 700X or approved equal shall be required based on the extent and depth of wet, pumping soils.

G. Dewatering:

- 1. Dewatering equipment necessary to drain and keep excavations free of water under all circumstances shall be provided, operated, and removed by the Contractor.
- 2. Contractor shall obtain Soils Landscape Architect's approval of proposed method of dewatering.
- 3. Surface water shall be prevented from flowing into excavation. Accumulated water shall be promptly removed.
- 4. Dewatering system shall be maintained in place until tops of retaining walls are stabilized by pour of concrete paving

3.02 ROUGH GRADING

A. The site shall be graded to the limit lines and elevations shown on the drawings with such allowances as may be required for the construction of walks, and other intended site improvements. Tolerance for rough grading is 1/10th of a foot, plus or minus, at paved areas. At all other areas, functional use and appearance shall be the governing factors as determined by the Town Representative.

3.03 UNSUITABLE MATERIALS

A. Unsuitable soils, large rocks or boulders, broken concrete/asphalt and other deleterious material may be buried on site if the location, depth and method of burial is approved by the Town Representative. Only material that can not be accepted for on-site disposal shall be removed from the site by the Contractor.

3.04 FILL

A. Fill shall be placed in level layers not to exceed six inches in depth and mechanically compacted using optimum amount of moisture to achieve a 90% minimum degree of compaction.

3.05 EXCAVATION

- A. The Contractor shall make all necessary excavation for footings and slabs and do any additional excavation necessary to provide ample room for installation of concrete forms where required.
- B. Footings may be poured in trenches against undisturbed soil where approved by Town Representative.
- C. Bottom of excavations shall be level, free from loose material and brought to the indicated or required levels in undisturbed earth. All excavations shall be kept free from standing water. The Contractor shall do all pumping or draining that may be necessary in carrying on the work.
- D. Should excavations for footings, through error, be excavated to a greater depth than indicated or required, such additional depth shall be filled with concrete, as specified for footings, at the Contractor's expense. Excavations that have been dug wider than required shall be formed to conform with plans and specifications. Filling with concrete can only be accepted with the approval of the Town Representative.

3.06 BACKFILLING

- A. After the foundations and walls have been placed, forms removed, and concrete work approved, the excavation shall be backfilled with earth to the required grade.
- B. Select site material shall be used for backfill and shall be free from large stones and clods. Material shall be approved by the Town Representative.
- C. Fill material shall be spread in uniform lifts of not more than 6" in uncompacted thickness. Prior to commencing compaction, fills shall be brought to a uniform water content that will permit proper compaction by either aerating the material if it is too wet, or spraying the material with water if it is too dry. Each lift shall be thoroughly mixed before compaction to assure uniform distribution of water content. All fills shall be brought to suitable elevations above grade to provide for anticipated settlement and shrinkage thereof.
- D. Layers of backfill shall be moistened with water, the amount to be rigidly controlled to insure optimum moisture conditions for the type of fill material used. Excess water causing saturated earth beneath footings will not be permitted.
- E. Backfill shall be compacted by suitable means to 95% density.
- F. In landscape areas where fill is required and no immediate or future construction is planned (such as planting areas), each layer of fill and scarified subgrade shall be compacted to not less than 85% and not more than 92% relative compaction.
- G. All trenches for other work shall be backfilled in accordance with this section, and may be tested at the discretion of the Town Representative. Collection of samples and testing shall be facilitated by the Contractor.

3.07 AGGREGATE BASE

- A. Aggregate base shall be spread and compacted in conformance with Section 26, "Aggregate Bases," of the Caltrans Standard Specifications for Class 2 Aggregate Base. Finished aggregate base shall have the minimum thickness as shown on the Drawings and shall not vary more than 0.05 foot above or below the established grade. The aggregate base shall be compacted to 95 percent relative compaction in conformance with ASTM D 1557. The surface of the aggregate base after compaction shall be hard, unyielding, uniform, smooth, self-draining, and true to grade and cross-section.

3.08 COMPACTION AND TESTING

- A. General:
 - 1. Compaction testing shall be in accordance with ASTM Test Designation, 6838-17. Reference maximum compacted unit weight of soil shall be in accordance with ASTM D1557.
 - 2. Each layer of fill and scarified subgrade for all flatwork and retaining walls shall be compacted in accordance with Section 19 of the Caltrans specifications
 - 3. Compaction shall be limited around the drip line perimeter of the trees as required by the project arborist.
 - 4. Compaction shall be performed using compacting rollers, pneumatic or vibrator compactors, or other equipment and mechanical methods approved by the Landscape Architect.

3.09 FINISH GRADING

- A. Finish grades shall slope to drain without water pockets or irregularities and shall conform to the intent of all plans and sections - after thorough settlement and compaction of the soil. Finish grades shall meet all existing or established controls of sidewalks, curbs and walls and shall be of uniform slope and grade in accordance with CBC between points of fixed elevations or elevation controls and from such points to established grades. At all other areas, functional use and appearance shall be the governing factor.
- B. Provide smooth transitions between slopes of different gradients and direction. Fill all dips and remove any bumps in the overall plane of the slope. All fine grading shall be inspected and approved by the Landscape Architect prior to the installation of other items to be placed.
- C. Finish soil grade tolerance at the completion of grading:
 - 1. Building and paved areas: +0 to -0.05 feet.
 - 2. Other areas: 0.10 feet.

3.10 PROTECTIVE MEASURES

- A. All excavations shall be protected and guarded against danger of life, limb and property.
- B. Existing improvements and trees within contract limits or areas of activity shall be properly protected.

3.11 DUST ABATEMENT

- A. During the entire period of construction, site areas shall be kept sprinkled in accordance with the Town of Moraga Dust Control requirements

3.12 FIELD QUALITY CONTROL

- A. All excavation, filling, and compaction shall be performed under the direct observation of the Landscape Architect. The Contractor shall cooperate with the Landscape Architect in all aspects of the work. Materials placed, or improvements constructed in the absence of the Landscape Architect's approval to proceed shall be presumed to be defective and, at the discretion of the Landscape Architect shall be removed and replaced at no cost to the Owner. The Landscape Architect shall be notified at least 48 hours prior to required observation or testing.

END OF SECTION