

**INTERESTED BIDDERS MUST PURCHASE A HARD COPY OF THE PLANS & SPECS  
IN ORDER TO BID THIS PROJECT**

## **CITY OF HEALDSBURG**



**NOTICE TO BIDDERS, PROPOSAL, CONTRACT**

**FOR**

**HVAC INSTALLATION AND MISC. REPAIRS AT THE HEALDSBURG  
POLICE DEPARTMENT**

**CITY OF HEALDSBURG**

**BID OPENING DATE:**

**February 2, 2017 at 2:00PM**  
**City Hall Council Chambers**

**CITY OF HEALDSBURG  
CITY MANAGERS OFFICE  
401 Grove Street**

**HEALDSBURG, CALIFORNIA 95448  
PHONE: (707) 431-3317**

## NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that sealed bids will be received by the City Engineer of the City of Healdsburg at the Administration/Clerks office located at City Hall, 401 Grove Street, Healdsburg, County of Sonoma, State of California, until the hour of 2:00 p.m., on the 2nd day of February, 2017 at which time they will be publicly opened and read aloud in the chambers of the City Council, 401 Grove Street, Healdsburg, California, for:

### **HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION**

Plans and specifications may be obtained at the office of the City Engineer of the City of Healdsburg, 401 Grove Street, Healdsburg, California 95448 for a non-refundable fee of \$50.00. The project consists of installation of a new HVAC system, application of roof coating, water proofing and gasket replacement of trellis brackets and windows, installation of new restroom counters and plumbing, misc. ADA repairs and electrical modifications.

In accordance with California Public Contract Code Section 3400, bidders may propose equals of products listed in the technical specifications or project plans by manufacturer name, brand or model number, unless the technical specifications or plans specify that the product is necessary to match others in use. Complete information for products proposed as equals must be submitted to the City Clerk's Office for review at least seven (7) working days before the time specified for bid opening in accordance with the bidders instructions contained in the bid package.

In accordance with California Public Contract Code Section 20170, all bids must be presented under sealed cover and include one of the following forms of bidder's security: cash, cashier's check made payable to the City, certified check made payable to the City, or a bidder's bond. The amount of bidder's security provided must equal at least ten (10) percent of the total of the bid price for the base bid and the additive or deductive items listed in this notice. The successful bidder must submit to the City complete, executed copies of all required documents within ten (10) working days of receiving written notice of award of the project. Bidder's security of any successful bidder that fails to do so will be forfeited to the City. Such required documents include, but are not limited to, a payment or labor and materials bond in an amount of at least 100 percent of the amount payable by the terms of the project contract and that satisfies the requirements of California Civil Code Section 9554, and a performance bond in an amount of at least 100 percent of the amount payable by the terms of the contract. All project bonds must be executed by an admitted surety insurer in accordance with applicable law and acceptable to the City.

Pursuant to the provisions of Section 1720 et seq. of the Labor Code of California, the Director of Industrial Relations for the State of California has ascertained the current general prevailing rate of wages for employer purposes, in Sonoma County, State of California. Not less than the general prevailing rate of per diem wages for work of a similar character in Sonoma County and not less than the general prevailing rate of per diem wages for holiday work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the project.

In accordance with the California Labor Code Section 1773.2, copies of the applicable determinations of the Director are on file in the City of Healdsburg City Engineer's Office and may be reviewed upon request. . **A mandatory pre-bid meeting is scheduled for this project for**

**Thursday, January 26, 2017 at 10:00 AM at the Healdsburg Police Department located at 238 Center Street, Healdsburg CA 95448**

In accordance with California Public Contract Code Section 3300, a valid class B California contractor's license is required to bid on the project.

In accordance with California Public Contract Code Section 22300, except where prohibited by federal regulations or policies, the successful bidder may, on request and at its expense, substitute securities in lieu of amounts withheld by the City from progress payments to ensure performance under the contract in accordance with the contract documents.

The City of Healdsburg reserves the right to postpone the date and time for the opening of proposals at any time prior to the date and time announced in the advertisement in accordance with applicable law.

The City of Healdsburg reserves the right to reject any and all bids or to waive any defects or irregularity in bidding in accordance with applicable law. In accordance with California Public Contract Code Section 20103.8, if the City elects to award a contract for performance of the project, the contract will be awarded in accordance with California Public Contract Code Section 20162 and other applicable law to the responsible bidder submitting a responsive bid with the lowest total bid price for the base bid without consideration of the bid price for any additive or deductive items. All bids will remain valid for 90 days after the bid opening. Except as permitted by law and subject to all applicable remedies, including forfeiture of bidder's security, bidders may not withdraw their bid during the 90 day period after the bid opening.

By order of the City Council of the City of Healdsburg, Sonoma County, California.

PUBLISH: January 12 and January 18, 2017

/s/ Tina Lindenberg-Kirchner Date: January 9, 2017  
Administrative Services Manager

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# **INSTRUCTIONS TO BIDDERS**

## **1. DEFINITIONS**

- 1.1 Bid forms. The bid forms are the forms listed in the Bid Forms Section in the bid package Table of Contents.
- 1.2 Bid package. A complete bid package consists of the following documents: Notice to Bidders, Instructions to Bidders, Bidder's Check List, Proposal and Schedule of Bid Prices, Bid Bond, Contractor License Information, List of Proposed Subcontractors, Workers Compensation Insurance Certification, Acknowledgement of Indemnity and Insurance Requirements Non-collusion Affidavit, Debarment Certification, Public Contract Code Section 10285.1, Public Contract Code Section 10162 Questionnaire, Public Contract Code Section 10232 Statement, Debarment and Suspension Certification, Bidder's Signature Page, Contract Check List, Contract, Performance Bond, Payment Bond, Maintenance Bond, Escrow for Security Deposit Contract, Part 1, General Provisions, Special Provisions (if applicable), the Project Plans and Technical Specifications.
- 1.3 Contract documents. All of the documents incorporated into the final Project contract as listed in the contract.
- 1.4 Project. The Project is the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION as described in the bid package.
- 1.5 Project Plans. The Project Plans are the primarily graphic detailed requirements concerning the Project contained in the bid package.
- 1.6 Technical Specifications. The Technical Specifications provide detailed requirements concerning the Project.

## **2. BIDDER'S REPRESENTATIONS**

Each bidder by submitting a bid represents that:

- 2.1 The bidder has read and understands the bid package and the bid is in accordance with all of the requirements of the bid package and applicable law.
- 2.2 Neither the bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7.
- 2.3 The bidder understands that quantities of unit price items may vary from the estimates provided in the Technical Specifications.
- 2.4 Representatives of the bidder have visited the Project site and have familiarized themselves with the conditions under which the Project work is to be performed so as to ensure that the Project work may be performed for the amount bid.

- 2.5 The bidder has informed the City in writing no later than five (5) working days prior to the time specified for bid opening of any apparent conflicts, errors, or ambiguities contained in the bid package or between the contents of the bid package and the Project site.

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

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

### **4. PRE-BID ACCESS TO THE PROJECT SITE**

- 4.1 Prior to submitting a bid, it will be the sole responsibility of each bidder to conduct any additional examination, investigation, exploration, test, study or other inquiry and to obtain any additional information pertaining to the physical conditions (including surface, subsurface, and underground utilities) at or near the Project site that may affect the cost, progress, or performance of the Project, and that the bidder deems are necessary to prepare its bid for performance of the Project in accordance with the bid package and contract documents. Bidders seeking any such additional examination or other inquiries or information concerning the Project will do so at the bidder's sole expense.
- 4.2 Bidders seeking to conduct any additional examination or other inquiry at the Project site must request site access from the City at least two (2) working days in advance. The location of any excavation, boring or other invasive testing will be subject to approval on behalf of the City and any other agencies with jurisdiction over such testing. Bidders may not conduct tests at the Project site prior to obtaining City approval. The City may require bidders to execute an access agreement prior to approving testing at the Project site. Once approved testing is complete, Bidders must fill all trenches or holes, restore all pavement to match existing structural section, and otherwise clean up and restore the test site to its pre-test condition.

## **5. BIDDING PROCEDURE**

- 5.1 Bids must be delivered to the City of Healdsburg, 401 Grove Street, Healdsburg, California 95448, no later than the time and date specified in the Notice to Bidders. Bids will be opened and read publicly at that time. Bids that are submitted late according to the official time kept by the City Clerk or a designee will be returned unopened. Telephones for use by bidders are not available at the City offices.
- 5.2 In accordance with California Public Contract Code Section 20170, bids must be presented under sealed cover. Bids must be submitted using the bid forms furnished with the bid package. Bids must include all documents listed in the Bidder's Check List completed in accordance with the bid package. Bids must bear the bidder's legal name and be signed by a representative authorized to bind the bidder. Bids must be typed or written in ink. Corrections may be made if initialed by the individual signing the bid. No oral or telegraphic modifications of bids, including facsimile modifications, will be considered. Bids that are incomplete or that are not presented on the bid forms furnished with the bid package may be deemed non-responsive.
- 5.3 Each bid must give the full business address of the bidder. Bids of partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership, or by an authorized representative, followed by the printed name and title of the person signing. Bids of corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary or other person authorized to bind the corporation. The name of each person signing must also be typed or printed below the signature. Upon request of the City, bidders will furnish satisfactory evidence of the authority of the person signing the bid. Bids of joint ventures must include a certified copy of the legal agreement constituting the joint venture.
- 5.4 No person, firm, corporation, partnership or legal joint venture may submit more than one bid for the Project. However, a person, firm, corporation, partnership or legal joint venture that has submitted a subcontract proposal to a bidder, or that has quoted prices on materials to a bidder may submit a subcontract proposal, quote prices to other bidders and submit its own bid.
- 5.5 In accordance with California Public Contract Code Section 20170, all bids must include one of the forms of bidder's security specified in the Notice to Bidders in an amount of at least ten (10) per cent of the total of the bid prices for the base bid and those additive or deductive items specifically identified in the Notice to Bidders for the purpose of determining the lowest price bid. Bidders that elect to provide bidder's security in the form of a bid bond must execute a bid bond using the form provided in the bid forms. The bidder's security is tendered as a guarantee that the successful bidder, if issued a notice of award concerning the Project contract, will execute and submit to the City all required bonds, certificates of insurance, completed contract forms and other documents listed in the Contract Check List and enter into a contract with the City within ten (10) working days of receipt of the notice of award. The bidder's security of any successful bidder that fails to do so will be forfeited to the City. All bidders' security not forfeited to the City will be returned once a successful bidder provides all required documents and enters a contract with the City in

accordance with all applicable bid package requirements. Forfeiture of the bidder's security to the City will not waive or otherwise limit any other remedy available to the City under applicable law.

- 5.6 In accordance with California Business and Professions Code Section 7028.15, Public Contract Code Section 20103.5, and as specified in the Notice to Bidders, all Project work must be performed by properly licensed contractors and subcontractors with active licenses in good standing as of the date and time specified for bid opening, or, if the Project involves federal funds, no later than the time the Project contract is awarded. Bidders must verify their Contractor's License number and license expiration date in the proposal under penalty of perjury. Bids that do not satisfy applicable licensing requirements will be considered non-responsive and rejected and may subject the bidder to criminal and/or civil penalties.
- 5.7 Pursuant to Labor Code Section 1771.1(a), 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 Part 7, Chapter 1 of the Labor Code., unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Labor Code Section 1725.5 at the time the contact is awarded.
- 5.8 If the bid forms include a bidder's questionnaire, all bids must include a completed bidder's questionnaire on the forms provided. By submitting a bid, bidders authorize City representatives to verify any and all information provided on the bidder's questionnaire and agree to indemnify, defend and hold harmless the City and its officials, officers, employees, agents and volunteers to the full extent permitted by law from and against any claims, liability or causes of action, including, without limitation, legal fees and costs, arising out of verification of the information provided on the bidder's questionnaire, and/or arising out of use of information provided in the bidder's questionnaire to determine, in accordance with applicable law, the qualification of the bidder to perform the Project.
- 5.9 Bids may be withdrawn prior to the time set for bid opening by a written request signed by an authorized representative of the bidder filed with the City Clerk. The bid security submitted with bids so withdrawn will be returned to the bidder. Bidders that have withdrawn their bid in accordance with this provision may submit a new bid prior to the time set for bid opening in accordance with all applicable bid package requirements. Bids may not be withdrawn during the ninety day period after the time set for bid opening except as permitted by law pursuant to California Public Contract Code Section 5100 and following. Any other bid withdrawal will result in forfeiture of the bidder's bid security to the City.

## **6. BID PROTESTS**

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

- 6.1 The protest must contain a complete statement of the basis for the protest.

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

## **7. AWARD**

- 7.1 In accordance with applicable law, the City reserves the right to reject any or all bids and to waive any informality in any bid. The City reserves the right to accept any portion of any bid, unless the bid package expressly provides that the award will be made as a whole. If the City elects to award a contract for performance of the Project, the contract will be awarded in accordance with California Public Contract Code Section 20162 and other applicable law to the responsible bidder submitting a responsive bid with the lowest total bid price for the base bid and the additive or deductive alternate items listed in the Notice to Bidders. In accordance with the contract documents and applicable law, the City may add or deduct items of work from the Project after the lowest responsible bidder is determined.
- 7.2 The successful bidder must submit to the City complete, executed copies of all documents specified in the Contract Checklist within ten (10) working days of receiving written notice of award of the Project. Bidder's security of any successful bidder that fails to do so will be forfeited to the City.
- 7.3 The successful bidder and any subcontractors and others engaged in performance of the Project must have valid local business license(s), as applicable, before commencing work on the Project.

- 7.4 Upon verifying that the successful bidder has provided complete, executed copies of all documents specified in the Contract Checklist an authorized City representative will execute the Project contract, and the City will issue to the successful bidder a notice to proceed specifying the Project commencement date. The number of days within which the Project must be complete begins to run on the Project commencement date.

## **8. PRICING**

- 8.1 If an inconsistency exists between the amount listed for a unit price in a bid and the total listed for that bid item (e.g., if the total listed for a bid item does not equal the unit price listed in the bid multiplied by the quantity listed), subject to applicable law, the unit price will be deemed to accurately reflect the bidder's intent concerning the bid item and the intended total for the bid item will be deemed to be the unit price as listed in the bid multiplied by the quantity listed.
- 8.2 If the Project bid price is a lump sum total made up of smaller individual bid item prices and an inconsistency exists between the lump sum total bid price and any individual bid item price, subject to applicable law, the individual bid item prices as listed in the bid will be deemed to accurately reflect the bidder's intended bid for the Project and the intended lump sum total bid for the Project will be deemed to be the sum of the individual bid item prices as listed in the bid, even if that sum is different from the amount actually listed as the lump sum total bid for the Project.
- 8.3 Any federal, state, or local tax payable on articles to be furnished for the Project will be included in the lump sum total bid price and paid by the Contractor under the contract. The City is exempt from federal excise tax and will provide a certificate of exemption to the successful bidder upon request.

## **9. QUANTITIES**

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

## **10. SUBSTITUTION OF "OR EQUAL" ITEMS**

- 10.1 In accordance with California Public Contract Code Section 3400, where the Technical Specifications or Project Plans list products by manufacturer's name, brand or model number such information indicates the quality and utility of the items desired and does not restrict bidders to that manufacturer's name, brand or model number, unless the Technical Specifications or Project Plans specify that the listed product is necessary to match others in use on a particular public improvement either completed or in the course of completion. Except where the Technical Specifications indicate that a particular brand product is necessary to match others in use, when a manufacturer's name, brand or model number is listed, it will be construed to be followed by the words "or equal" whether or not those words in fact follow the manufacturer's name, brand name or model number listed in the Technical Specifications or Project Plans. Unless the Technical Specifications or Project Plans indicate that a particular brand product is necessary to match others in use, bidders may propose equals of products listed by manufacturer name, brand name or model number.
- 10.2 Complete information for products proposed as equals must be submitted to the City for review at least seven (7) working days before the time specified for opening bids. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the City to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. Proposals concerning products proposed as equals that are submitted less than seven (7) days before the time specified for opening bids will not be considered. Failure to bid products specified by manufacturer name, brand name or model number where the Technical Specifications or Project Plans specify that a particular product is necessary to match others in use, or where no proposal concerning products proposed as equals has been submitted in accordance with this provision may render a bid non-responsive.

## **11. SUBCONTRACTING**

- 11.1 Bids must be in accordance with the requirements of the Subletting and Subcontracting Fair Practices, Act, California Public Contract Code Section 4100 and following. Bids must include a completed list of proposed subcontractors on the form included in the bid package. In accordance with California Public Contract Code Section 4104, completed lists of proposed subcontractors must include the name, business location, the portion (type or trade), and dollar amount of the Project work to be subcontracted for each subcontractor that will perform a portion of the Project work (including special fabrication and installation of a portion of the work) valued in excess of one half of one percent of the total Project bid price. If the Project work includes construction of streets or highways, the completed list of proposed subcontractors must include the subcontractor name, business location, type of work and dollar amount to be subcontracted for each subcontractor that will perform a portion of the Project work (including special fabrication and installation of a portion of the work) valued in excess of one half of one percent of the total Project bid price, or ten thousand dollars (\$10,000), whichever is greater.

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

11.3 RESERVED

11.4 Subcontractors must meet all applicable indemnification and insurance requirements as detailed in the Acknowledgement of Indemnity and Insurance Requirement.

## **12. ASSIGNMENT**

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

## **13. BONDS**

13.1 The successful bidder must submit to the City a performance bond within ten working days of receiving written notice of award. If the Project involves expenditures in excess of twenty five thousand dollars (\$25,000), the successful bidder must submit to the City a payment or labor and materials bond within 10 days of the date of mailing of the notice of award. Prior to issuance of the final Project payment, the successful bidder must submit a warranty or maintenance bond. All bonds must be executed by corporate sureties who are admitted surety insurers in the State of California in accordance with applicable law and acceptable to the City. Individual sureties will not be accepted. All Project bonds must be executed using the forms provided in the bid package.

13.2 In accordance with California Civil Code Section 9554, the payment or labor and materials bond must be in the amount of one hundred percent of the total amount payable by the terms of the Project contract and guarantee payment to persons listed in California Civil Code Section 9100(a) for work performed and for charges for materials, supplies, and equipment provided under the Project contract (including amounts due under or subject to the Unemployment Insurance Code) in accordance with the requirements of California Civil Code Section 9554.

13.3 The performance bond must be in the amount of one hundred percent of the amount payable by the terms of the Project contract to guarantee the faithful performance of the Project work.

13.4 The warranty or maintenance bond must be in the amount of ten percent of the final Project contract amount and guaranty the Project work against defects in materials, equipment, workmanship, or needed repair for one year from the City's

acceptance of the Project work. A warranty or maintenance bond that meets these requirements must be submitted to the City prior to issuance of final Project payment.

#### **14. LABOR LAWS**

- 14.1 Bidders must comply with applicable provisions of the California Labor Code.
- 14.2 In accordance with California Labor Code Section 1861, bids must include a workers compensation insurance certification on the form included in the bid package.
- 14.3 In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Project is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Project.
- 14.4 In accordance with California Labor Code Part 7, Chapter 1m Article 2, Sections 1770, 1773, and 1173.2 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for work in the locality in which the Project is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Project is to be performed for each craft, classification or type of worker needed to perform the Project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City offices and will be made available on request. The Contractor can also download this information from the website: <http://www.dir.ca.gov/dlsr/PWD/>.
- 14.5 In accordance with California Labor Code Section 1777.1, contractors and subcontractors that are found guilty of willfully violating Chapter 1 of Part 7 of Division 2 of the Labor Code (except for Section 1777.5), or that are found guilty of such violations with intent to defraud, and entities in which such contractors or subcontractors have any interest, may be ineligible to bid on, be awarded, or perform Project work as a subcontractor.
- 14.6 Pursuant to, Labor Code Section 1771.1(a), 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 Part 7, Chapter 1 of the Labor Code, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Labor Code Section 1725.5 at the time the contract is awarded.

## **BIDDER'S CHECK LIST**

Did You:

- \_\_\_\_\_ Submit equal product proposals, if any, in accordance with the instructions to bidders included in the bid package at least 7 days before the time specified for bid opening?
- \_\_\_\_\_ Include with your bid properly completed, accurate copies of the following documents in the following order using the forms included in the bid package:
  - \_\_\_\_\_ Bidder's check list
  - \_\_\_\_\_ Proposal and Schedule of Bid Prices that state the bid as intended
  - \_\_\_\_\_ Copies of each addendum issued signed and dated on behalf of the bidder
  - \_\_\_\_\_ Executed bid bond
  - \_\_\_\_\_ Contractor license information
  - \_\_\_\_\_ List of subcontractors
  - \_\_\_\_\_ Signed Workers compensation insurance certification
  - \_\_\_\_\_ Signed Debarment certifications
  - \_\_\_\_\_ Signed Acknowledgment of Indemnity and Insurance Requirements
  - \_\_\_\_\_ Signed non-collusion affidavit
  - \_\_\_\_\_ Bidder's questionnaire, if any
  - \_\_\_\_\_ Public Contract Code Section 10285.1 Statement
  - \_\_\_\_\_ Public Contract Code Section 10162 Questionnaire
  - \_\_\_\_\_ Public Contract Section 10232 statement
  - \_\_\_\_\_ Executed bidder's signature page
- \_\_\_\_\_ Arrange to have the sealed bid delivered to the City of Healdsburg offices at 401 Grove Street, Healdsburg, California, 95448 on or before \_\_\_\_\_ p.m. on \_\_\_\_\_

**DO NOT DETACH**

**PROPOSAL**

For: Construction of: HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION

For the City of Healdsburg, Sonoma County, California.

TO THE HONORABLE CITY COUNCIL  
OF THE CITY OF HEALDSBURG

The undersigned, as bidder, declares that he has carefully examined the work, the annexed proposed form of contract, and agrees that if this Proposal is accepted that he will contract with the City of Healdsburg, under the form of contract annexed of hereto, to provide all the necessary tools, apparatus, and other means of accomplishing the work as specified in the contract in the manner and time herein prescribed, and in accordance with the requirements of the Engineer as therein set forth, and he will take in full payment therefore the following prices for the work to be done completely performed to the satisfaction of the City of Healdsburg, to-wit:

**Lump Sum Base Bid:**

Total Base Bid \$ \_\_\_\_\_

Written in words \_\_\_\_\_

The undersigned further agrees to deliver and to complete the same within **120 one hundred twenty calendar days**, from the date of issuance, by the Engineer, of instructions to proceed with the work, and within 10 days of the date of mailing of the notice of award, to enter into and execute and provide to the City the necessary contract with the necessary bonds and other required documents, and in case of default in executing the necessary contract within the time fixed by the Instructions to Bidders, the bidder's security accompanying this bid will become the property of and be forfeited to the City of Healdsburg.

Prime Contractor \_\_\_\_\_

License # \_\_\_\_\_ Expiration Date: \_\_\_\_\_

The Contractor's license number and expiration date are herein stated under penalty of perjury.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

.....  
**CORPORATION**

(Corporate Seal)

**Corporate signature**

\_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

President's signature \_\_\_\_\_

Secretary's signature \_\_\_\_\_

Corporation organized under the laws of the State of \_\_\_\_\_

.....  
***PARTNERSHIP***

**Partnership Name:** \_\_\_\_\_

Address: \_\_\_\_\_

Names of Co-Partners and Addresses: \_\_\_\_\_

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

.....  
***SOLE PROPRIETORSHIP***

**Names of Individuals and Addresses:** \_\_\_\_\_

\_\_\_\_\_

*NOTE: Sign in proper space above.*

CITY OF HEALDSBURG  
Healdsburg, California 95448

**BID BOND**

*(NOTE: Bidders must use this form, use of any other bond form may render a bid non-responsive)*

KNOW ALL MEN BY THESE PRESENTS:

That we, as PRINCIPAL, and \_\_\_\_\_, a (sole proprietorship/corporation/partnership/joint venture) organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and an admitted surety insurer authorized to do business in the State of California, as SURETY, are held and firmly bound unto the City of Healdsburg, as OBLIGEE, in a penal sum equal to ten-percent (10%) of the total bid price including the base bid and alternates specified in the proposal of the PRINCIPAL, to the OBLIGEE for the work described below, which penal sum is \_\_\_\_\_ (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the PRINCIPAL has submitted the accompanying proposal dated \_\_\_\_\_, \_\_\_\_\_ to the OBLIGEE, for the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION (designated as the "Project") which proposal is hereby made a part hereof;

NOW THEREFORE, if the PRINCIPAL shall not withdraw said proposal within the ninety (90) day period following the opening of bids, and if the PRINCIPAL receives written notice concerning award of the Project to the PRINCIPAL and shall, within ten (10) calendar days of receiving such notice: enter into a written contract with the OBLIGEE in the form prescribed in the bid package issued by the OBLIGEE concerning the Project; and give insurance and bond with good and sufficient sureties guaranteeing the faithful performance and proper fulfillment of such contract and guaranteeing payment for labor and materials used for performance of the contract as required by law; and file with the OBLIGEE all required documents and do all other thing required in accordance with the bid package issued by the OBLIGEE concerning the Project for the contract between the PRINCIPAL and the OBLIGEE to become effective and for work to commence in accordance with the bid package issued by the OBLIGEE concerning the Project, or, in the event of withdrawal of the accompanying proposal within the ninety (90) day period following the opening of bids; or failure by the PRINCIPAL to enter into such contract with the OBLIGEE or to give the OBLIGEE such bonds or to file any other documents or to do any other things required in the bid package issued by the OBLIGEE for the Project, if the PRINCIPAL shall pay the OBLIGEE the difference between the total bid price in the accompanying proposal and the amount for which the OBLIGEE may procure the required performance, if the latter amount be in excess of the former, together with all costs incurred by the OBLIGEE in again attempting to let the Project, and if the said PRINCIPAL shall fully reimburse and save harmless the OBLIGEE from any damage sustained by the OBLIGEE through failure of the PRINCIPAL to enter into the written contract or to file the required performance or labor and material bonds, or to file any other required documents or to do any other things required for the contract between the PRINCIPAL and the OBLIGEE to become effective and the work to commence in accordance with the bid package issued by the

OBLIGEE concerning the Project, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the bid or contract documents for the Project, or to the specifications included in the same, or to the work to be performed thereunder, or to the notice to bidders, or to any other documents concerning the Project, shall in anywise affect SURETY's obligation under this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to such bid or contract documents.

In the event suit is brought upon this bond by the OBLIGEE and judgment is recovered, the SURETY shall pay all costs incurred by the OBLIGEE in such suit, including a reasonable attorney's fee to be fixed by the Court.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

(Corporate Seal) PRINCIPAL \_\_\_\_\_  
By \_\_\_\_\_

(Acknowledgement) Title \_\_\_\_\_  
SURETY \_\_\_\_\_

(Corporate Seal) By \_\_\_\_\_  
(Attorney-in-fact)

(Acknowledgement) Title \_\_\_\_\_

*(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bid bond.)*

**CONTRACTOR LICENSE INFORMATION**

The bidder acknowledges that the license required for performance of the HVAC  
INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION is an B.

The bidder holds the following California Contractors License(s):

1. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
2. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
3. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
4. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
5. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
6. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
7. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
8. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
9. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_
10. License No. \_\_\_\_\_, Class \_\_\_\_\_, Expiration Date \_\_\_\_\_

Bidder's Taxpayer Identification No. \_\_\_\_\_

## LIST OF SUBCONTRACTORS

In accordance with the requirements of the Subletting and Subcontracting Fair Practices, Act, California Public Contract Code Section 4100 and following, listed below are the name, business location, and the portion (type or trade) of the Project work to be subcontracted to each subcontractor that will perform a portion of the Project work (including special fabrication and installation of a portion of the work) valued in excess of one half of one percent of the total bid price. If the Project work includes construction of streets or highways, listed below are the name, business location, and the portion (type or trade) of the Project work to be subcontracted to each subcontractor that will perform a portion of the Project work (including special fabrication and installation of a portion of the work) valued in excess of one half of one percent of the total Project bid price, or ten thousand dollars, whichever is greater. Also listed below are the proposed subcontract dollar amount and current California Contractor's License Number(s) for each proposed subcontractor. Bids that fail to include complete proposed subcontractor information in accordance with this form and Public Contract Code Section 4100 and following may be deemed non-responsive.

In accordance with California Public Contract Code Section 4106, for any portion of the Project work with a value of more than one half of one percent of the total bid price for which no subcontractor is listed, or for which more than one subcontractor is listed, the bidder certifies by submission of its bid that the bidder is qualified to perform that portion of the Project work and that the bidder will perform that portion of the Project work with its own forces. The penalties listed in California Public Contract Code Section 4111 will apply to any substitution of another subcontractor for a subcontractor listed below except as permitted by the City in accordance with Section 4107 and following of the California Public Contract Code.

For the purposes of determining the value of work to be performed by the Contractor pursuant to this provision, materials, equipment, incidentals, etc., shall be considered to have been purchased by the contractor or subcontractor that is to install them. Where a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated cost of such portion of the subcontracted item, as determined from information submitted by the Contractor, subject to approval by the Engineer.

1. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_
2. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_
3. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_

- Current Contractor's License No.(s) \_\_\_\_\_
4. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_
5. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_
6. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_
7. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_
8. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_
9. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_
10. Subcontractor Name \_\_\_\_\_  
Business Location \_\_\_\_\_  
Trade \_\_\_\_\_  
Subcontract Amount \_\_\_\_\_  
Current Contractor's License No.(s) \_\_\_\_\_

## **NON-COLLUSION DECLARATION**

### **TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

**(Title 23 United States Code Section 112 and Public Contract Code Section 7106)**

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 directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. 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 \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Bidder

2387815.1

## **WORKERS COMPENSATION INSURANCE CERTIFICATION**

By submitting its bid the bidder certifies as follows:

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

## **DEBARMENT CERTIFICATION**

By submitting its bid the bidder certifies in accordance with California Public Contract Code Section 6109 that neither the bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109, contractors and subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on public works projects.

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Signature of Bidder

---

Printed Name

# ACKNOWLEDGMENT OF INDEMNITY AND INSURANCE REQUIREMENTS

## Insurance

- a. All required insurance must be provided in the form of “occurrence”-type policies underwritten by admitted insurers in the State of California with a rating of A or better from the current year Best Rating Guide. All policies must be issued at the expense of the Contractor and must be maintained at the Contractor’s expense throughout the performance of the Work. Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this Contract, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.
- b. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this contract including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor’s work. Contractor shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the Contract prior to commencement of any work and Contractor will provide proof of compliance, upon request, to the City.
- c. Subcontractor hired by the Contractor agree to be bound to the Contractor and the City in the same manner and to the same extent as Contractor is bound to the City under the Contract. Subcontractor further agrees to include the same requirements and provisions of this Contract, including the Indemnity and Insurance requirements, with any Subcontractor to the extent they apply to the scope of the Subcontractor's work. A copy of the Contract Indemnity and Insurance provisions will be furnished to the Subcontractor upon request
- d. The Contractor and any Subcontractors engaged in performance of the Work must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The Contractor must verify that all Subcontractors comply with this requirement.
- e. Within ten working days following the Notice of Award, the Contractor must submit to the City acceptable certificates of insurance, declarations page(s) and endorsements evidencing that the Contractor has the required insurance in effect and will maintain it throughout the performance of the Work and beyond, as applicable, the following kinds and amounts of insurance:
  1. The minimum limits of the Commercial General Liability (including bodily injury, personal injury and property damage) insurance shall be:
    - \$2,000,000 per occurrence
    - \$2,000,000 aggregate

If the work to be performed involves any excavation, the policy shall include an endorsement that affords coverage for explosion, collapse and underground hazards.

2. If the work to be performed involves vehicles or vehicular equipment, the Automobile insurance limit shall be:

\$2,000,000 per accident for bodily injury and property damage

3. Automobile coverage should be at least as broad as Insurance Services Automobile Liability form CA 0001 Code 1 (“any auto”). No endorsement may be attached limiting the coverage. If coverage provided is anything less than ‘any auto’ additional information, such as a schedule of covered autos, proof of personal auto liability coverage, or a verification statement may be required by the City.

4. Worker’s Compensation Insurance. Proof of Workers Compensation and Employers Liability insurance as required by any applicable law, regulation or statute, including the provisions of Division IV of the Labor Code of the State of California, and any act or acts amending it. Worker’s compensation insurance must be for Statutory Limits and must cover the full liability of the Contractor. The Contractor’s Employer’s Liability Insurance must be in an amount no less than \$1,000,000.00 per occurrence. The workers’ compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, must agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of such policy.

5. Umbrella/Excess Policy. The limits of insurance required under this Contract may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.

f. Additional Requirements

- i. Endorsements must add the City, its officials, officers, employees, agents and volunteers as an additional insured (“Additional Insured”). Examples of City approved insurance forms are included in this package. If the Contractor provides policy pages or broad forms of endorsement the insurance carrier will be asked to sign, initial and date all applicable sections of the document which conveys coverage to the City.
- ii. It shall be a requirement under this Contract that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the name insured; which ever greater.
- iii. The Additional Insured coverage under the Contractor’s policy shall be “primary and non-contributory” and will not seek contribution from the City of Healdsburg’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 013.

- iv. The Contractor shall provide the City with a 30 day written notice of any reduction or cancellation of such insurance required to be furnished by the Contractor; and include a severability of interest clause acceptable to the City and if requested by the City.
  - v. If an Umbrella or Excess Policy is used to satisfy the requirements, than an email or language stating such on the certificate must be provided from the insurance carrier/broker and that the Umbrella/Excess Policy 'follows form' or is 'continuous' to the General liability and/ Auto liability policy in addition to the required endorsement.
  - vi. The City has included examples of approved standard and preferred forms of endorsements in the Contract. If the Contractor's insurance carrier chooses to use forms other than the City's approved forms , such forms shall be subject to the prior approval of the City. If the Contractor provides policy pages instead of an endorsement the insurance agent/broker will be asked to sign, initial and date all applicable sections of the policy that meet the City's insurance requirements.
- g. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City, The City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right exercise later.

**Contractor's failure to provide insurance certificates and endorsement forms that are acceptable to the City within ten (10) days of notice of award of contract shall:**

- (i) constitute a failure to complete the "Contract Documents Checklist" as described Page 13.
  - (ii) entitle the City to rescind any contract award
  - (iii) result in a forfeiture of Contractor's bid bond or other form of bid security.
- a. Contractor must continue to provide approved forms of insurance certificates, declarations page(s) and endorsements that meet the requirements of Section 8-1.07 of the Contract Documents for 1 year (To be completed by Risk Management) following recordation of a Notice of Completion or other form of notice of project completion provided by City.

**Indemnities**

- a. The Contractor will take all responsibility for the Work, and will bear all losses and damages directly or indirectly resulting to the Contractor, any subcontractors engaged in performance of the Work, the City, its officials, officers, employees, agents, volunteers and consultants, and to third parties on account of the performance or character of the Work, unforeseen difficulties, accidents, or occurrences of other causes predicated on active or passive negligence of the Contractor or of any subcontractor engaged in performance of the Work. To the fullest extent permitted by law the Contractor will indemnify, defend and hold harmless the City, its officials, officers, employees, agents, volunteers and consultants from and against any or all loss, liability, expense, claims, costs (including costs of defense), suits, and damages of every kind, nature and description (including, but not limited to, penalties resulting from exposure to

hazards in violation of the California Labor Code) directly or indirectly arising from the performance of the Work ("Claims"). The Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

- b. The Contractor will indemnify, defend and hold harmless the City, the City's officials, officers, employees, volunteers, agents and the Engineer and the Architect for all liability on account of any patent rights, copyrights, trade names or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the City that any such charges have been paid.
- c. The Contractor assumes all liability for any accident or accidents resulting to any person or property as a result of inadequate protective devices for the prevention of accidents in connection with the performance of the Work. The Contractor will indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, volunteers and consultants from such liability.
- d. The defense and indemnification obligations in this Contract are undertaken in addition to, and shall not in any way be limited by the insurance obligations contained in this Agreement. Sections 8-1.08 or 8-1.09. The Contractor will defend, with legal counsel reasonably acceptable to the City, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorney's fees incurred. The Contractor will promptly pay any judgment rendered against the City, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the City, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the City, its officials, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.
- e. Subject to the requirements of Section 5 of the General Provisions, the Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims related to damage to surface or underground facilities caused by the Contractor or any of the Contractor's privities or agents.
- f. The Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims, including any fines or other penalties, related to failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with provision 12-1.04 of the Contract. The City may withhold from amounts due or that may become due the Contractor under this Contract amounts that equal or are estimated to equal the amount of Claims, including fines, resulting from failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit,

or to implement the SWPPP in accordance with provision 12-1.04 of the Contract.

- g. In accordance with California Civil Code Section 2782(a), nothing in the Contract will be construed to indemnify the City for its sole negligence, willful misconduct, or for defects in design furnished by City. In accordance with California Civil Code Section 2782(b), nothing in the Contract will be construed to impose on the Contractor or to relieve the City from liability for the City's active negligence. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.
- h. Contractor's and subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Contract for the full period of time allowed by law.
- i. The defense and indemnification obligations of this Contract are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Contract.

**I have read, understand and agree to comply with the Indemnity and Insurance requirements supplied with this notice to bidders.**

---

Signature of Bidder

---

Printed Name

**TITLE 49, CODE OF FEDERAL REGULATIONS - PART 29**  
**DEBARMENT AND SUSPENSION CERTIFICATION**

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of City, partner, director, officer, manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past 3 years;
3. Does not have a proposed debarment pending; and,
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space:

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Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

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Signature of Bidder

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Printed Name

**PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats, 1986), the bidder hereby declares under penalty of perjury under the laws of the State of California, that the bidder has \_\_\_ , has not \_\_\_ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided.

The above Statement is part of the Proposal.  
Bidders are cautioned that making false certification may subject the certifier to criminal prosecution.

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Printed Name

## **PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE**

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer is "Yes", explain the circumstances in the following space.

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Printed Name

**PUBLIC CONTRACT SECTION 10232 STATEMENT**

In accordance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Printed Name

REC COPY

## **BIDDER'S SIGNATURE PAGE**

By signing this proposal the bidder certifies, under penalty of perjury under the laws of the State of California, that the information submitted with this proposal for the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION ("Project"), which information includes, but is not limited to, the Bidder's Check List, Proposal and Schedule of Bid Prices, Bid Bond, Contractor License Information, List of Subcontractors, Workers Compensation Insurance Certification, Non-collusion Affidavit, Debarment Certification, Debarment and Suspension Certification, Public Contract Code Section 10285.1 Statement, Public Contract Code Section 10162 Questionnaire, and Public Contract Code Section 10232 Statement, is accurate, true and correct, and is submitted in accordance with the requirements of the bid package issued by the City of Healdsburg concerning the Project and applicable law. By signing this proposal the bidder representative specified below certifies that he or she is legally authorized to bind the bidder.

The bidder agrees to deliver and to complete the Project within (working time) 120 (one hundred twenty) **calendar days** from the date of issuance, by the Engineer, of instructions to proceed with the Project, and within 10 days of the date of mailing of the notice concerning the award, to enter into and execute and provide to the City the Project contract, bonds and all other documents specified in the Contract Check List included in the bid package, and in case of default in executing the Project contract within the time fixed by the Instructions to Bidders, the bidder's security accompanying this bid shall become the property of and be forfeited to the City of Healdsburg.

Prime Contractor \_\_\_\_\_

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(Corporate Seal)

Corporate signature

\_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

President's signature \_\_\_\_\_

Secretary's signature \_\_\_\_\_

Corporation organized under the laws of the State of \_\_\_\_\_

Partnership Name: \_\_\_\_\_

Address: \_\_\_\_\_

Names of Co-Partners and Addresses:

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

Names of Individuals and Addresses:

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

---

NOTE: Sign in proper space above.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Typed or printed name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Bidder)

Bidder business address (street, city, state and zip code)

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

Bidder Business phone: ( ) \_\_\_\_\_

Bidder Business fax: ( ) \_\_\_\_\_

## CONTRACT DOCUMENTS CHECK LIST

Complete, accurate, executed copies of the following documents must be submitted to the City of Healdsburg in accordance with the bid package issued by the City within ten (10) working days of receiving written notice concerning award of the project. The bidder's security of any successful bidder that fails to do so will be forfeited to the City.

- \_\_\_\_\_ Contract, Part 1
- \_\_\_\_\_ Performance Bond
- \_\_\_\_\_ Payment Bond
- \_\_\_\_\_ Certificates of Insurance, Declarations page(s) and Endorsements
- \_\_\_\_\_ Escrow for Deposit Agreement, if applicable
- \_\_\_\_\_ General Conditions, Contract, Part 2
- \_\_\_\_\_ Special Provision (if included)
- \_\_\_\_\_ Technical Specifications
- \_\_\_\_\_ Project Plans
- \_\_\_\_\_ Contractor Safety Program
- \_\_\_\_\_ Report of Use/Storage of Hazardous Substances

# CONTRACT PART 1

This Contract is made and entered into this (to be completed by the City) \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between the City of Healdsburg, a California Municipal Corporation, 401 Grove Street, Healdsburg, California, 95448, hereinafter referred to as "City," and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as "Contractor"

## RECITALS

A. NOTICE INVITING BIDS. The City gave notice inviting bids to be submitted by \_\_\_\_\_ for the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION by published notice and/or posting in accordance with California Public Contract Code Section 20164 and other applicable law.

B. BID OPENING. On \_\_\_\_\_, City representatives opened the bids for the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION and read the bids aloud.

C. PROJECT AWARD. On \_\_\_\_\_, the City Council awarded the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION to the Contractor and directed City staff to send the Contractor written notice of award of the project. The City Council conditioned award of the project on the Contractor's providing executed copies of all documents specified in the Contract check list included in the bid package within ten (10) calendar days of receiving written notice concerning award of the project.

D. REQUIRED DOCUMENTS. The Contractor has provided the City executed copies of all documents specified in the Contract checklist included in the bid package within ten (10) calendar days of receiving written notice of award.

## CONTRACT TERMS

The City and the Contractor agree as follows:

1. THE WORK. The Contractor must furnish all equipment, tools, apparatus, facilities, material, labor, and skill necessary to perform and complete in a good and workmanlike manner the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION ("Work") as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.
2. LOCATION OF WORK. The Work will be performed at the following location:  
238 Center Street, Healdsburg, California

3. TIME FOR COMPLETION. The Contractor must complete the Work in accordance with the Contract Documents within **120 (one hundred twenty) calendar days** from the date specified in the City's Notice to Proceed ("Time for Completion").
  
4. REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK. If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this Contract in accordance with its terms, and/or if the Contractor fails, by the Time for Completion, to fully perform all of the Contractor's obligations under this Contract that have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City's remedies for the Contractor's failure to perform include, but are not limited to, assessment of **liquidated damages of \$500 per day** in accordance with California Government Code Section 53069.85 and the Contract Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.
  
5. CONTRACT PRICE AND PAYMENT. As full compensation in consideration of completion of the Work in accordance with the Contract Documents and in consideration of the fulfillment of all of the Contractor's obligations under the Contract Documents, the City will pay the Contractor in lawful money of the United States the total price of \$\_\_\_\_\_ (the "Contract Price") as specified in the Contractor's completed Bid Schedule dated \_\_\_\_\_, \_\_\_\_\_, attached to and incorporated in this Contract. Payment to the Contractor under this Contract will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law. The City will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this Contract is first modified in accordance with its terms. The City's obligation to pay the Contractor under this Contract is subject to and may be offset by charges that may apply to the Contractor under this Contract. Such charges include but are not limited to, charges for liquidated damages and/or substitute performance in accordance with the Contract Documents.
  
6. PREVAILING WAGES. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

7. THE CONTRACT DOCUMENTS. This Contract consists of the following documents (“Contract Documents”), all of which are incorporated into and made a part of this Contract as if set forth in full. In the event of a conflict between or among the Contract Documents, precedence will be in the following order:
- 7.1 Part 1 of the Contract and change orders and other amendments to this agreement signed by authorized representatives of the City and the Contractor.
  - 7.2 The General Provisions, Part 2 of the Contract, and change orders and other amendments to the General Conditions signed by authorized representatives of the City and the Contractor.
  - 7.3 The Special Provisions, if included make up Part 3 of the Contract, and include any addenda to the Special Provisions signed by authorized representatives of the City and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the City and the Contractor.
  - 7.4 The Project Plans, Part 4 of the Contract, addenda to the Project Plans signed by authorized representatives of the City and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the City and the Contractor.
  - 7.5 Notice Inviting Bids.
  - 7.6 Instructions to Bidders.
  - 7.7 The successful bidder’s completed Proposal Form and Bidder’s Sheet.
  - 7.8 The successful bidder’s completed Contractor License Information.
  - 7.9 The successful bidder’s completed List of Proposed Subcontractors.
  - 7.10 The successful bidder’s Workers Compensation Insurance Certification.
  - 7.11 The successful bidder’s completed Non-collusion Affidavit.
  - 7.12 The successful bidder’s Debarment Certification.
  - 7.13 The successful bidder’s signed Acknowledgment of Indemnity and Insurance requirements and completed Certificates of Insurance, Declaration page(s) and Endorsements.
  - 7.14 The successful bidder’s executed Performance Bond.
  - 7.15 The successful bidder’s executed Payment Bond.
  - 7.16 The Maintenance Bond form included in the bid package that the Contractor must execute prior to release of final payment under the Contract.

- 7.17 The successful bidder's Qualification Statement, if any.
- 7.18 The successful bidder's signed Signature Form.
8. PROVISIONS INCORPORATED BY REFERENCE. Provisions or parts of provisions that are incorporated by reference and not set forth at length in any of the Contract Documents will only form a part of this Contract to the extent the Contract Documents expressly make such provisions or parts of provisions a part of this Contract. For example, published public works agreement provisions, such as those of the State of California Department of Transportation Standard Specifications (known as the Standard Specifications) are only a part of this Contract to the extent expressly incorporated in this Contract by section number. When such published provisions are made a part of this Contract, references in the published provisions to other entities, such as the State, the Agency, or similar references, will be deemed references to the City as the context of this Contract may require.
9. INTERPRETATION OF CONTRACT DOCUMENTS. Any question concerning the intent or meaning of any provision of the Contract Documents, including, but not limited to, the Technical Specifications or Project Plans, must be submitted to the Public Works Director, or his/her designee, for issuance of an interpretation and/or decision by the authorized Public Works Director in accordance with the requirements of the Contract Documents. Interpretations or decisions by any other person concerning the Contract Documents will not be binding on the City. The decision of the Public Works Director, or his/her designee, will be final.
10. ASSIGNMENT PROHIBITED. The Contractor may not assign part or all of this Contract, or any moneys due or to become under this Contract, or any other right or interest of the Contractor under this Contract, or delegate any obligation or duty of the Contractor under this Contract without the prior written approval of an official authorized to bind the City and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the City and the Contractor's sureties will be void and a material breach of this Contract subject to all available remedies under this Contract and at law and equity.
11. CERTIFICATION RE CONTRACTOR'S LICENSE. By signing this Contract the Contractor certifies that the Contractor holds a valid license issued by the California State Contractors Licensing Board as required to perform the Work and as specified in the Notice to Bidders for the Project, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this Contract subject to all available remedies under this Contract and at law and equity.
12. SEVERABILITY. If any term or provision or portion of a term or provision of this Contract is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.

**CONTRACTOR**

\_\_\_\_\_

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

Title: \_\_\_\_\_

Executed by Contractor on: \_\_\_\_\_

[Attach Notary Page]

**Attest:**

By: \_\_\_\_\_  
Maria Curiel, City Clerk

The forgoing contract is approved by me in its entirety as to form on \_\_\_\_\_,  
201\_\_\_\_.

\_\_\_\_\_  
City Attorney  
City of Healdsburg

**CITY**

\_\_\_\_\_ City of Healdsburg \_\_\_\_\_

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

David Mickaelian,  
City Manager

Executed by City on: \_\_\_\_\_

By: \_\_\_\_\_  
Heather Ippoliti, Assistant City  
Manager/Risk Manager

## PERFORMANCE BOND

*(NOTE: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond)*

### **KNOW ALL MEN BY THESE PRESENTS:**

WHEREAS the City Council of the City of Healdsburg has awarded to \_\_\_\_\_, (designated as the "PRINCIPAL") a contract for the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, said PRINCIPAL is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, WE, the PRINCIPAL and \_\_\_\_\_ as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California, are held and firmly bound unto the City (designated as "OBLIGEE"), in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, if the above bound PRINCIPAL, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified and in all respects according to their true intent and meaning, and shall defend, indemnify and save harmless the OBLIGEE, it's officials, officers, employees, volunteers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

And the said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications or the plans accompanying the same or to any other part of the contract documents, as defined therein, shall in any way affect said SURETY's obligation on this bond, and the SURETY does hereby waive notice of any such change, extension of time, alteration or addition.

And the said SURETY, for value received, hereby stipulates and agrees that upon termination of the Contract for cause, the OBLIGEE reserves the right to refuse tender of the PRINCIPAL by the SURETY to complete the Contract work.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

(Corporate Seal)

PRINCIPAL\_\_\_\_\_

By\_\_\_\_\_

(Acknowledgement)

Title\_\_\_\_\_

SURETY\_\_\_\_\_

(Corporate Seal)

By\_\_\_\_\_

(Attorney-in-fact)

(Acknowledgement)

Title\_\_\_\_\_

*(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bond.)*

## **PAYMENT/LABOR AND MATERIALS BOND**

*(NOTE: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond)*

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City Council of the City of Healdsburg has awarded to \_\_\_\_\_, (designated as the "PRINCIPAL") a contract for the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, pursuant to California Civil Code Section 9550, the PRINCIPAL is required, before entering upon the performance of the Contract, to file a payment bond with and have such bond approved by the officer or public entity by whom the Contract is awarded; and

WHEREAS, pursuant to California Civil Code Section 9554, such payment bond must be in a sum not less than one hundred percent (100%) of the total amount payable by the terms of the Contract, and must satisfy the other requirements specified in that section; and

WHEREAS, the PRINCIPAL is required in accordance with the Contract to furnish a payment bond in connection with the Contract to secure payment of claims of laborers, mechanics and materialmen employed on work under the Contract in accordance with applicable law;

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the PRINCIPAL and the undersigned \_\_\_\_\_, as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California are held and firmly bound unto all laborers, material men, and all other persons named in California Civil Code Section 9100 (a) in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than one hundred percent of the total amount payable by the terms of the Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the PRINCIPAL or any of the PRINCIPAL's subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any persons named in California Civil Code Section 9100 (a), or fail to pay for any labor, materials, provisions, provender, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or fail to pay amounts due under the Unemployment Insurance Code with respect to such work or labor, or fail to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the PRINCIPAL or any subcontractors of the PRINCIPAL pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the SURETY will pay for the same in an amount not exceeding the amount herein above set forth, and also, in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court; otherwise this obligation shall be void.

It is hereby expressly stipulated and agreed by the said Surety, for value received, that this bond shall inure to the benefit of any and all of the persons named in Section 9100 (a) of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

It is hereby further expressly stipulated and agreed by the said Surety, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or the specifications or drawings accompanying the same or to any other part of the contract documents, as defined therein, shall in any manner affect the obligations of the SURETY on this bond, and SURETY does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

(Corporate Seal)

PRINCIPAL \_\_\_\_\_

By \_\_\_\_\_

(Acknowledgement)

Title \_\_\_\_\_

SURETY \_\_\_\_\_

(Corporate Seal)

By \_\_\_\_\_  
(Attorney-in-fact)

(Acknowledgement)

Title \_\_\_\_\_

*(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bond.)*

## MAINTENANCE BOND

*(NOTE: The Contractor must use this form. Use of any other bond form may prevent release of final payment and/or release of retention under the Contract)*

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City Council of the City of Healdsburg has awarded to \_\_\_\_\_, (designated as the "PRINCIPAL") a contract for the HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, the PRINCIPAL is required under the terms of the Contract to furnish a bond for the correction of any defects due to defective materials or workmanship in the work performed under the Contract.

NOW, THEREFORE, we the PRINCIPAL and the undersigned \_\_\_\_\_, as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California, are held and firmly bound unto the City of Healdsburg, (designated as the "OBLIGEE"), in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than ten percent (10%) of the final Contract price, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if, during a maintenance period of one (1) year from the date of acceptance by the OBLIGEE of the contracted work, the PRINCIPAL upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship, shall diligently take the necessary steps to correct said defects within seven (7) days from the date of said notice, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

If any action shall be brought by the OBLIGEE upon this bond, a reasonable attorney's fee, to be fixed by the Court, shall be and become a part of OBLIGEE's judgment in any such action. No right of action shall accrue on this bond to, or for the use of, any person or corporation other than the OBLIGEE named herein or the heirs, executors, administrator or successor of the OBLIGEE.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, the name and corporate seals of each

corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

PRINCIPAL \_\_\_\_\_

By \_\_\_\_\_

(Acknowledgment)

Title \_\_\_\_\_

SURETY \_\_\_\_\_

(Corporate Seal)

By \_\_\_\_\_

(Attorneys-in-fact)

(Acknowledgment)

Title \_\_\_\_\_

*(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bond.)*

# ESCROW AGREEMENT

## SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the City of Healdsburg, whose address is 401 Grove Street, Healdsburg, California 95448, hereinafter called "City", \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called "Contractor", and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called "Escrow Agent"

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

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by City pursuant to the Construction Contract entered into between the City and Contractor for the project entitled HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the City shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as substitute for Contract earnings, the Escrow Agent shall notify the City within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the City and Contractor. Securities shall be held in the name of City of Healdsburg and shall designate the Contractor as the beneficial owner.
2. The City shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the City makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investments of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the City pays the escrow agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the City. These expenses and payment terms shall be determined by the City, Contractor and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of the Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the City.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from City to the Escrow Agent that City consents to the withdrawal of the amount sought to be withdrawn by Contractor.

7. The City shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven day's written notice to the Escrow Agent from the City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.

8. Upon receipt of written notification from the City certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

9. Escrow Agent shall rely on the written notifications from the City and the Contractor pursuant to Sections (5) to (8) inclusive, of this agreement and the City and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the City and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures, are as follows:

**On Behalf of City:**

\_\_\_\_\_

Title

\_\_\_\_\_

Name

**On Behalf of Contractor**

\_\_\_\_\_

Title

\_\_\_\_\_

Name

**On Behalf of Escrow Agent:**

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

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

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

City:

Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

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Address

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# CONTRACT PART 2

## GENERAL PROVISIONS

### SECTION 1 Definitions

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

- 1-1.01 Contract:** The agreement between the City and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents.
- 1-1.02 Architect:** The person or persons so specified on the Technical Specifications and/or Project Plans.
- 1-1.03 ASTM:** American Society for Testing and Materials latest edition.
- 1-1.04 Bid Package:** All of the documents listed as comprising the entire Bid Package as specified in the Instructions to Bidders and representing the full set of documents made available to bidders on the Project.
- 1-1.05 City:** City of Healdsburg
- 1-1.06 Public Works Standard Specifications and Details:** The edition of the City of Healdsburg Public Works Standard Specifications and Details in effect on the date of the last signature to this Contract.
- 1-1.07 Contract Documents:** All those documents listed in Paragraph 7 of the Contract Part 1 as comprising the entire agreement between the City and the Contractor.
- 1-1.08 Contractor:** The successful bidder for the Project and party to the Contract with the City as specified in the Contract Documents.
- 1-1.09 Days:** Unless otherwise specified in the Contract Documents, days mean calendar days.
- 1-1.10 Engineer/Project Manager:** The City's authorized representative for administration and overall management of the Project, Contract, and Work. The Engineer/Project Manager is the official point of contact between the City and the Contractor.
- 1-1.11 Project:** The HVAC INSTALLATION AND MISC REPAIRS AT THE HEALDSBURG POLICE STATION project as described in the Technical Specifications and Project Plans.
- 1-1.12 Project Plans:** The primarily graphic detailed requirements concerning the Project contained in the Bid Package and any addenda to the Project Plans signed by authorized City representatives and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the City and the Contractor in accordance with the requirements of the Contract Documents.

- 1-1.13 Project Inspector:** The party or parties charged by the City with inspecting the Work for compliance with the requirements of the Contract Documents and applicable laws and regulations. The Project Inspector acts under the direction of the City and must coordinate with the Engineer as directed by the City in accordance with the Contract Documents.
- 1-1.14 Caltrans Standard Specifications:** The State of California Department of Transportation Standard Specifications for Construction of Local Streets and Roads, May 2006 edition.
- 1-1.15 Caltrans Construction Manual:** The State of California Department of Transportation Construction Manual, August 2006 edition.
- 1-1.16 Subcontractor:** A person, firm or corporation that is obligated as a party to a contract with the Contractor to perform part of the Work. For purposes of these General Provisions Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Work according to the Technical Specifications and/or Project Plans.
- 1-1.17 Technical Specifications:** The detailed Project requirements contained in the Bid Package and any addenda to the Technical Specifications signed by authorized City representatives and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the City and the Contractor in accordance with the requirements of the Contract Documents.
- 1-1.18 Work:** The furnishing of all equipment, tools, apparatus, facilities, material, labor and skill necessary to perform and complete in a good and workmanlike manner the Project as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.
- 1-1.19 Written Notice:** Will be deemed to have been duly served for purposes of these General Provisions and any Contract of which they are a part if delivered in person to the individual or to a member of the firm or to any office of the corporation for whom the notice is intended, or if sent by registered or certified mail to the last known business address known to the party giving notice. Unless otherwise specified in the Contract Documents, the last known address of the Contractor will be that listed in the Contractor's completed Proposal.

## **SECTION 2 Scope of Work**

**2-1.01 Documents Furnished by City.** The City will furnish to the Contractor, free of charge, five (5) sets of prints of the Project Plans and Technical Specifications for execution of the Work. Throughout the performance of the Work the Contractor must keep one copy of the Project Plans and Technical Specifications in good order and available for review by the Engineer, the Architect, and any other City contractors or representatives.

**2-1.02 Ownership of Documents Furnished by City.** All documents furnished by the City, including, but not limited to, the Technical Specifications, Project Plans, and any copies, are the property of the City. Documents furnished by the City may not be used on any other work. All documents furnished by the City must be returned to City upon completion of the Work.

### **2-1.03 Technical Specifications and Project Plans.**

- a. The Technical Specifications and Project Plans are complementary and intended to mutually describe the Work necessary to complete the Project in accordance with the Contract Documents.
- b. In general, the Project Plans indicate dimensions, position and kind of construction, and the Technical Specifications indicate qualities and methods. Any Work indicated on the Project Plans and not mentioned in the Technical Specifications or vice versa must be furnished as though fully set forth in both. Work that is not particularly detailed, marked or specified will be the same as similar Work that is detailed, marked or specified. The Contractor must furnish items necessary for the operation of equipment depicted in the Project Plans or specified in the Technical Specifications that are suitable to allow such equipment to function properly at no extra charge.
- c. The Contractor must notify the Engineer as soon as possible of any apparent errors or inconsistencies, including, but not limited to, typographical or notational errors in the Project Plans, Technical Specifications, and/or in work done by others affecting the Work. The Engineer will issue instructions concerning any such apparent errors or inconsistencies. If the Contractor proceeds with Work impacted by apparent errors or inconsistencies without instructions from the Engineer, the Contractor does so at its sole risk and will have all of the obligations and the City will have all of the rights and remedies specified in Section 11 concerning any resulting damage or defect.
- d. The General Provisions apply with equal force to all of the Work, including extra work authorized by the Engineer in accordance with the Contract Documents. The Contractor must submit any required shop diagrams and/or drawings by the times and in the quantities indicated in the Technical Specifications. Any such shop diagrams and/or drawings must show completely the Work to be done, expanding on the Project Plans concerning details not previously shown, field conditions and the condition of the Work. Engineer review of such shop diagrams and/or drawings will concern conformance with the requirements of the Contract Documents only. The Engineer assumes no responsibility for the correctness or accuracy of the dimensions or any other contents of any shop diagrams and/or drawings submitted by the Contractor. The Contractor must check all dimensions at the Work site. Shop diagrams and/or drawings must be clearly marked with the name of the Project and

the name of the Contractor, subcontractor or supplier making the submittal, and must be stamped and signed by the Contractor and submitted under a signed transmittal letter from the Contractor certifying that all dimensions have been checked at the Work site. These requirements are mandatory. The Engineer will not review shop diagrams and/or drawings that do not satisfy these requirements. The Contractor will be responsible for any and all discrepancies between dimensions of the actual Work site and/or Work and those shown on shop diagram and/or drawings submitted by the Contractor, and for any other errors contained in or resulting from such shop diagrams and/or drawings, including, but not limited to, errors in material and/or equipment quantities and any resulting errors, delays or additional cost in the performance of the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any discrepancies or errors in shop diagrams and/or drawings submitted by the Contractor, and concerning any resulting errors, delays or additional costs in the performance of the Work.

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## SECTION 3 Control of Work and Material

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

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

### 3-1.03 Inspection and Testing of Work and Material.

- a. The City, the Engineer, the Architect and their representatives will have access to the Work at all times wherever it is in preparation or progress. The Contractor must provide proper facilities for such access and for inspection.
- b. The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Architect or Engineer.
- c. If the Engineer, the Technical Specifications, or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must give the Engineer timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any Work subject to such testing that is covered up without timely notice to the Engineer or without the approval or consent of the Engineer must, if required by the Engineer, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any Work subject to testing that is covered up or otherwise rendered inaccessible for inspection without timely notice to the Engineer and that is not uncovered for examination at the Contractor's expense if required by the Engineer.
- d. Tests of materials or qualification tests required by the Contract Documents must be made in accordance with the Technical Specifications and the requirements of the California Building Standards Code as adopted by the City and other applicable law. Copies of all testing reports will be distributed as required in the Technical Specifications.
- e. The City or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to

be according to the Contract Documents, the City will pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Engineer. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.

- f. The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the City consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the City has not consented to accept.

**3-1.04 Samples Furnished by the Contractor.** The Contractor must furnish all samples for approval as directed in sufficient time to permit the Architect or Engineer to examine, approve and select samples before they are required by the progress of the Work. Portions of the Work for which samples are required and for which the Architect or Engineer has selected samples must be in accordance with such approved samples. Samples must be sent prepaid to the office of the Engineer or to such place as the Engineer may direct.

**3-1.05 Materials and Substitutions.**

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

interference with efficient progress of the Work, with other activities of the City, or with the use of existing City facilities by the public. Materials may not be stored in a manner that presents a safety hazard or a nuisance. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the City or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the City or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the City. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or re-execute Work using non-conforming materials, and/or to make good all Work destroyed or damaged by such removal and/or execution.

- d. If any portion of the Work done or material furnished under this Contract proves defective and not in accordance with the Project Plans or Technical Specifications, and if the Engineer determines that the imperfection of the same is not of sufficient magnitude or importance to make the Work dangerous or undesirable, or if the removal of such Work, is impractical or will create conditions which are dangerous or undesirable, the Engineer may retain such Work, instead of requiring the imperfect Work to be removed and reconstructed, and make such deductions therefore in the payments due or to become due the Contractor as are just and reasonable.

**3-1.06 Audit and Examination of Records.** The City may examine and audit at no additional cost to the City all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or Contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other Project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until three years after final payment under the Contract. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be expended is in excess of \$10,000, this Contract will be subject to the examination and audit of the State Auditor, at the request of the City, or as part of any audit of the City, for a period of three (3) years after final payment under the Contract.

**3-1.07 Advertising.** No advertising signs of any kind may be displayed on the Work site, or on fences, offices or elsewhere adjacent to the Work site.

**3-1.08 Project Schedule.** Within ten (10) days after execution and delivery of the Contract, and prior to the issuance of the notice to proceed, the Contractor must deliver to the

Engineer a bar chart and critical path (CPM) schedule detailing the Contractor's intended schedule of Work for the entire Project. The schedules must be detailed to clearly show the relative sequence of the items of Work, their inter-relationships, start and completion dates, float, the critical path, and any other item deemed necessary by the Engineer. The schedule must allow for the completion of the entire Work within the Time for Completion.

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

**3-1.09 Construction Staking.** All Work done under this Contract must be in conformance with the Project Plans and staked by the Engineer in the field. The Contractor must inform the Engineer, forty-eight (48) hours in advance, of the time and places at which he or she wishes to do work, in order that lines and grades may be furnished and necessary measurements for record and payment made, with the minimum of inconvenience to the Engineer and delay to the Contractor.

The City will provide construction staking services. The Contractor shall carefully preserve bench marks, reference points, and stakes and in the case of willful or careless destruction, will be responsible for the cost of replacement and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance

**3-1.10 Materials Testing.** Materials will be tested by the City of Healdsburg or its authorized agent, following the Caltrans Standard Specifications. Statistical testing may not be used. All individual samples must meet the specified test results. Each material used must meet the specified requirements.

The Contractor must request and coordinate all testing. All tests must occur in the presence of the Project Inspector. The City will, at its sole discretion, have the right to reject any and/or all test results, that do not meet this requirement, and to order a retest in the presence of the Project Inspector. The costs for all retests so ordered will be the responsibility of the Contractor. The cost of all retests will be charged to the Contractor at the actual cost plus 30 percent, with a minimum charge of \$150.00 per test to cover staff and administrative costs.

The City, at its sole expense, will provide all initial material and compaction tests. Sampling and testing will comply with Chapter 3 of the Caltrans Construction Manual at a minimum. Where conditions vary, the City may perform additional testing. Cost for testing of materials offered in lieu of the specified materials will be the responsibility of the Contractor. Cost for R-value tests when required by the Caltrans Standard Specifications will be the responsibility of the Contractor.

Testing will only be performed on normal City working days between the hours of 8:00 a.m. and 4:00 p.m. unless other arrangements are made in advance. Tests performed outside of these hours may be subject to increased charges.

The Contractor must request all tests in writing a minimum of 2 working days in advance of the time desired. A minimum of one working day must be allowed for compilation and reporting of data and test results after tests have been performed. No subsequent layer of material may be placed until a passing test is obtained and acknowledged by the City.

Concrete and asphalt may be supplied only from suppliers approved and certified by the State Department of Transportation. Proposed mix designs for all concrete and asphalt concrete to be placed within the City of Healdsburg must be provided to and approved by the City, prior to placement.

The Contractor must coordinate with the City concerning any additional testing as required.

## SECTION 4 Changes in Work

- 4-1.01 City Directed Change Orders.** The City may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents, including, but not limited to the Technical Specifications, or Project Plans. Such amendments will in no way void the Contract, but will be applied to amend the Contract Price, if such amendments affect the Contract Price, the Project schedule, if such amendments affect the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment in accordance with this Section 4.
- 4-1.02 Writing Requirement.** Change orders and other amendments to the Technical Specifications, the Project Plans, or other Contract Documents may be made only upon prior written approval of the Engineer and as evidenced by a writing executed by authorized representatives of the City and the Contractor.
- 4-1.03 Contractor Proposed Change Orders.** Unless the Engineer otherwise authorizes or the City and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Engineer no later than the time of the proposed change.
- 4-1.04 All Change Orders.** All change order proposals must be submitted on completed City Change Order forms. All such change order proposals must itemize all cost impacts of the proposed change order and include a total price for that change order and the amended Contract Price that would become effective upon execution of the change order. All change order proposals must specify any change in the Project schedule, or in any Project milestone including, but not limited to, the Time for Completion, under the change order. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, may be accomplished by the Time for Completion then in effect.
- 4-1.05 Change Order Pricing.** Change order pricing for all change orders, whether, additive, deductive, or both, will be governed by the following:
- a. Prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify prices.
  - b. Cost impacts involving items for which the Contract Documents do not specify prices may be paid on a lump sum basis as approved by the City.
  - c. For cost impacts involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the City, charges or credits for the Work will be paid on a time and materials basis in accordance with the following and subject to Caltrans Standard Specifications, provision 9-1.03 concerning allowable direct charges. The time and materials payment will be the sum of and limited to the direct and indirect costs for labor, materials, equipment and overhead calculated as follows:
    6. Labor: The Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the Work. The cost of labor utilized in performing the Work, whether the employer is the Contractor, a subcontractor or other entity engaged in the performance of the Work, will be the sum of the following:

- **Actual Wages:** The actual wages paid will include any employer fringe benefit payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes. The actual wages and fringe benefits paid must be at the rates shown on the certified payroll documents submitted by the Contractor.
  - **Labor Surcharge:** The labor surcharge will be as set forth in the latest edition of the California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates". The labor surcharge will constitute full compensation for all payments imposed by State or Federal laws and for all other payments made to, or on behalf of, workers engaged in the performance of the Work, excluding the Actual Wages as defined above.
  - **Fixed Markup:** A fixed markup of 33% of the sum of the actual wages paid and the labor surcharge applicable to such actual wages, together with the actual wage and labor surcharge costs described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all labor for the Work.
7. **Materials:** Materials costs will be the direct costs for materials actually exhausted, consumed or entering permanently into the Work, plus a fixed markup of 15% of such direct materials costs, which, together with the direct cost of materials as described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all materials for the Work.
  8. **Equipment:** All equipment used will be paid in accordance with the rates in subsection 9-1.03A(3) entitled "Equipment Rental" of the Caltrans Standard Specifications, which subsection 9-1.03A(3) is made a part of this Contract, plus a fixed markup of 10% of such equipment rates, which, together with the equipment rates as described in this provision will constitute full and complete compensation for all overhead, profit, incidentals, and any and all other direct or indirect expenses associated with furnishing all equipment for the Work.
  9. Unless approved in writing in accordance with provision 4-1.02 of this Contract in advance of performance of the Work, any and all other cost impacts (including, but not limited to profit, bond premiums or fees, insurance premiums or fees, superintendent labor, clerical expenses, home office expenses, Work site office expenses, utility costs, permit costs, and licensing costs) involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the City, will constitute incidentals, full compensation for which will be deemed included in the markups for labor, material, and equipment specified above, and no additional compensation for such cost impacts will be allowed.

**4-1.06 Liability Under Unapproved Change Orders.** The Contractor will be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the

Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.

**4-1.07 Changes Subject to Contract Documents.** Any changes in the Work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions of the Contract Documents, including, but not limited to, the Technical Specifications and the Project Plans, except as modified by such change orders or amendments.

**4-1.08 Change Order Disputes.**

- a. Disputed City-Directed Change Orders. If the Contractor disputes a City directed change order following a reasonable effort by the City and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the City, the Contractor must commence performing the Work consistent with the disputed change order within five (5) working days of the last meeting between representatives of the Contractor and the City to resolve the dispute, or within the time specified in the disputed City directed change order, whichever is later. In performing Work consistent with a disputed City-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.
- b. Disputed Contractor Proposed Change Orders. If the City disputes a Contractor proposed change order, the City and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the City. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the City and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

## SECTION 5 Trenching and Utilities

**5-1.01 Excavation More Than Four Feet Deep.** In accordance with California Public Contract Code Section 7104, if the Work involves excavation more than four feet deep the Contractor must promptly notify the City in writing before disturbing: any material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; any subsurface or latent physical conditions at the Work site differing from those indicated; or any unknown physical conditions at the Work site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The City will promptly investigate any such conditions for which notice is given. If the City finds that the conditions do materially differ, or involve hazardous waste, and would cause a decrease or increase in the cost or time of performance of the Work, the City will issue a change order pursuant to Section 4 of these General Provisions. If a dispute arises between the City and the Contractor concerning whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the cost or time of performance, the Contractor will not be excused from any completion date provided in the Contract Documents, but will proceed with all Work to be performed. The Contractor will retain all rights under contract concerning resolution of disputes and protests between contracting parties.

**5-1.02 Excavation of Five Feet or More.** In accordance with California Labor Code Section 6705, contractors performing contracts exceeding \$25,000 in cost and involving excavation five or more feet deep must submit for the City's acceptance, prior to excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer.

### 5-1.03 Utility Relocation Costs.

- a. In accordance with California Government Code Section 4215, the City assumes the responsibility for the timely removal, relocation or protection of existing main or trunk line utility facilities located on the Work site if such utilities are not identified by the City in the Technical Specifications and/or Project Plans. The City will compensate the Contractor for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating existing main or trunk line utility facilities located at the Work site and not identified with reasonable accuracy in the Technical Specifications and/or Project Plans. The City will also compensate the Contractor for the cost of equipment on the Project necessarily idled during such work. The Contractor will not be assessed liquidated damages for Work completion delays caused by the City's failure to provide for removal or relocation of such main or trunk line utility facilities.
- b. Nothing in this provision or the Contract Documents will be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Work site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, cleanouts, on or adjacent to the Work site; provided, however, that nothing in this provision or the Contract Documents will relieve the City from identifying main or trunk lines in the Technical Specifications and/or Project Plans.

- c. Nothing in this provision or the Contract Documents will preclude the City from pursuing any appropriate remedy against the utility for delays, which are the responsibility of the utility.
- d. Nothing in this provision or the Contract Documents will be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.
- e. If the Contractor while performing the Work discovers utility facilities not identified by the City in the Technical Specifications and/or Project Plans, the Contractor must immediately notify the City and utility in writing.
- f. Either the City or the utility, whichever owns existing main or trunk line utility facilities located on the Work site, will have sole discretion to effect repairs or relocation work or to permit the Contractor to perform such repairs or relocation work at a reasonable price.

#### **5-1.04 Protection of Existing Facilities and Property.**

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

Subject to Section 5 of the General Provisions, the Contractor must take all necessary measures to avoid injury to existing surface and underground utility facilities in and near the Work site. Subject to Section 5 of the General Provisions, no error or omission of utility markouts will be construed to relieve the Contractor from his responsibility to protect all underground pipes, conduits, cables or other structures affected by the work.

The existing underground facilities in the area of Work may include telephone, television and electrical cables, gas mains, water mains, sewer pipe and drainage pipe. The various utility companies must be notified before trenching begins and at such other times as required to protect their facilities. Subject to Section 5 of the General Provisions, all underground facilities must be located and exposed ahead of trenching to prevent damage to the facilities, and to determine the depth and character of all facilities that cross or infringe on the trench prism. The Contractor must immediately notify the Engineer of any facilities found. If damage should occur to the existing facilities, the utility company and the City must be notified immediately and, subject to Section 5 of the General Provisions, repairs acceptable to the utility company must be made at the Contractor's expense.

The Project Plans show the underground utilities on the site of the construction insofar as they are known to the City. The drawings may not show facilities apparent from visual inspection of the site or service laterals or appurtenances, the existence of which can be inferred from the presence of other visible facilities such as buildings, meters, junction boxes, etc. on or adjacent to the construction site.

If in the performance of the Work an existing utility is encountered that is not shown on the Project Plans and is not apparent or inferable from visual inspection of the Work site, the Inspector must be notified immediately. The Engineer will determine, subject to Section 5 of the General Provisions, whether the Project Plans or Technical

Specifications should be modified, or whether the existing utility should be relocated or whether the Contractor must work around the existing utility. Subject to Section 5 of the General Provisions, the Contractor must replace, at his or her own expense, in as good condition as they were prior to the start of construction, all existing improvements and surroundings damaged by his or her operation. Reconstruction of all existing improvements must conform to City of Healdsburg Public Works Standard Specifications and Details under the direction of and subject to the acceptance by the Engineer.

Subject to Section 5 of the General Provisions, should the Contractor fail to take adequate measures to avoid injury or damage to the facilities described above, the City may take any actions necessary to protect such facilities from the Contractor's operations. Subject to Section 5 of the General Provisions, the City may withhold the cost of injury to existing surface and underground utility facilities in and near the Work site from amounts due or that may become due the Contractor.

## SECTION 6 Project Facilities

**6-1.01 Work Site Offices.** Any Work site office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such Work site office facilities will be paid from and included in the Contract Price.

**6-1.02 City Rights of Access and Ownership.** The City and its authorized representatives will at all reasonable times while such office facilities are located at the Work site (including, at a minimum, all times during which the Work is performed), have access to any such Work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the City and its authorized representatives, neither the Contractor nor its privities will have a reasonable expectation of privacy pursuant to the Fourth Amendment to the Unites States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such Work site facilities will be deemed at all times to be City property subject to inspection and copying by the City and its authorized representatives at all reasonable times while such facilities are located at the Work site (including, at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the City's rights of access and/or ownership pursuant to this Section 6 will constitute a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

## SECTION 7 Prosecution and Progress of the Work

**7-1.01 Liquidated Damages.** For the purposes of this Contract time is of the essence. The City and the Contractor agree that it will be difficult and/or impossible to determine the actual damage which the City will sustain in the event of the Contractor's failure to fully perform the Work or to fully perform all of the Contractor's obligations that have accrued pursuant to the Contract by the Time for Completion. Accordingly, the City and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the sum of \$500 per day for each and every calendar day completion of the Work and/or performance of all of the Contractor's obligations that have accrued pursuant to the Contract is delayed beyond the Time for Completion. The City and the Contractor further agree in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time the Contract was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Contract.

**7-1.02 No Damage for Avoidable Delays.** All delays in the Work that might have been avoided by the exercise of care, prudence, foresight and diligence of the Contractor or any privities of the Contractor will be deemed avoidable delays. Delays in the Work that may be unavoidable but that do not necessarily affect other portions of the Work or prevent completion of all Work within the Time for Completion, including, but not limited to, reasonable delays in Engineer approval of shop drawings, placement of construction survey stakes, measurements and inspection, and such interruption as may occur in prosecution of the Work due to reasonable interference of other contractors of the City, will be deemed avoidable delays. The Contractor will not be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for avoidable delays.

**7-1.03 Unavoidable Delays.** All delays in the Work that result from causes beyond the control of the Contractor and that the Contractor could not have avoided through exercise of care, prudence, foresight, and diligence will be deemed unavoidable delays. Orders issued by the City changing the amount of Work to be done, the quantity of materials to be furnished, or the manner in which the work is to be prosecuted, and unforeseen delays in the prosecution of the Work due to causes beyond the Contractor's control, such as strikes, lockouts, labor disturbances, fires, epidemics, earthquakes, acts of God, neglect by utility owners or other contractors that are not privities of the Contractor will be deemed unavoidable delays to the extent they actually delay the Contractor's completion of the Work. The Contractor will be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for unavoidable delays to the extent such delays actually delay the Contractor's completion of the Work and/or result in the Contractor incurring additional costs in excess of the Contract Price.

Delay due to normal, adverse weather conditions will not be deemed unavoidable. The Contractor should understand that normal adverse weather conditions are to be expected and plan the Work accordingly, such as by incorporating into the Project schedule normal, adverse weather delays as reflected in historical data of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce for the weather station most applicable to the Work site.

**7-1.04 No Damage for Contractor Caused Delay.** Contractor will not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents.

**7-1.05 No Damage for Delay Not Caused By the City, Delay Contemplated by the Parties, or other Reasonable Delay.** Contractor will not be entitled to damages for delay to the Work caused by the following, which the City and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances:

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

**7-1.06 Delays Caused by the City and/or It's Privities.** Delay caused by the City and/or other contractors of the City will be deemed unavoidable delays. Either the City or the Contractor may propose a change in the Time for Completion and/or the Project schedule for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City and the Contractor. Such proposed changes in the Time for Completion will constitute change order proposals subject to Section 4. In accordance with Section 4, the City and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing and/or changes in the Time for Completion and/or the Project schedule are in anticipation of impacts that may, but have not yet occurred, the City will be obligated to pay the Contractor for such anticipated impacts or to award a change in the Time for Completion and/or the Project schedule in accordance with the Contract and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated impacts. Notwithstanding anything to the contrary in Section 4, the City and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the City and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

**7-1.07 Delay Claims.** Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.

#### **7-1.08 Contractor Coordination of the Work.**

- a. The City reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor must at all times conduct the Work so as to impose no hardship on the City, others engaged in the Work or other contractors working at the Work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.
- b. If any part of the Work depends for proper execution or results upon the work of the City or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the City any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the City's or other contractor's Work as fit and proper.
- c. The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade will be part of the Work except where stated otherwise.
- d. The Contractor will provide proper facilities at all times for access of the City, the Engineer, Architect, and other authorized City representatives to conveniently examine and inspect the Work.

## **SECTION 8 Contractor Responsibilities**

**8-1.01 Eligibility.** By executing the Contract, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. To the full extent permitted by law the Contractor will hold harmless, indemnify and defend the City from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.

**8-1.02 Supervision of the Work.** The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by subcontractors. The Contractor is charged with ensuring that all orders or instructions from the City, Engineer or Architect are disseminated to and followed by all subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the City, the Engineer, or the Architect may require the Contractor and/or subcontractors engaged in performance of the Work to attend a Project meeting and the Contractor will attend, and ensure the attendance of any subcontractors whose attendance is required by the City and/or advisable in light of the matters to be addressed at the meeting.

**8-1.03 Contractor's Superintendent.** The Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent may not be changed without the consent of the City. The superintendent will represent the Contractor and all directions given by the City to the superintendent will bind the Contractor in accordance with the Contract. Superintendent time included in Contractor's completed bid schedule and/or in approved change orders, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.

**8-1.04 Competent Employees.** The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Work any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the City determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the City, the Contractor must ensure that employee performs no further Work and is no longer present at the Work site. Any such Contractor employee may not again be employed on the Work without City approval.

**8-1.05 Items Necessary for Proper Completion of the Work.** Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities and services necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.

### **8-1.06 Subcontracting.**

- a. RESERVED: For the purposes of determining the value of work to be performed by the Contractor pursuant to this provision, materials, equipment, incidentals, etc., shall be considered to have been purchased by the contractor or subcontractor that is to

install them. Where a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated cost of such portion of the subcontracted item, as determined from information submitted by the Contractor, subject to approval by the Engineer.

- b. By executing the Contract, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the City. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.
- c. The Contract and the performance of the Work are subject to the requirements of the Subletting and Subcontracting Fair Practices Act codified at California Public Contract Code Section 4100 and following. If the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of 1 percent of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Contract the Contractor subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Contract, assessment of a penalty of up to 10 percent of the amount of the subcontract, and disciplinary action by the Contractors State License Board.
- d. No contractual relationship exists between the City and any subcontractor engaged in performance of the Work.
- e. Incorporation of Contract Documents. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Contract including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the Contract Documents. Subcontractor further agrees to include these same provisions with any sub-subcontractor. A copy of the City's Contract Document indemnity and insurance provisions will be furnished to the subcontractor upon request. The Contractor shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and contractor will provide proof of compliance to the City. The Contractor will be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate Project information to a subcontractor that results in improper submittals and/or Work, or time or other impacts. The Contractor will have all of the obligations and

the City will have all of the remedies that are specified in Section 11 concerning any delay or additional costs incurred due to failure of the Contractor to provide adequate and accurate Project information to subcontractors.

- f. Coordination of Subcontract Work: The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.
- g. Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the Contract Documents. Subcontractor further agrees to include the same requirements and provisions of this agreement, including the indemnity and Insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City's Contract Document indemnity and insurance provisions will be furnished to the Subcontractor upon request.

#### **8-1.07 Insurance.**

- a. All required insurance must be provided in the form of "occurrence"-type policies underwritten by admitted insurers in the State of California with a rating of A or better from the current year Best Rating Guide. All policies must be issued at the expense of the Contractor and must be maintained at the Contractor's expense throughout the performance of the Work. Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of 1- year following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this Contract, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.
- b. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this contract including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Contractor shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the Contract prior to commencement of any work and Contractor will provide proof of compliance, upon request, to the City.
- c. Subcontractor hired by the Contractor agree to be bound to the Contractor and the City in the same manner and to the same extent as Contractor is bound to the City under the Contract. Subcontractor further agrees to include the same requirements and provisions of this Contract, including the Indemnity and Insurance requirements, with any Subcontractor to the extent they apply to the scope of the Subcontractor's work. A copy of the Contract Indemnity and Insurance provisions will be furnished to the Subcontractor upon request
- d. The Contractor and any Subcontractors engaged in performance of the Work must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The Contractor must verify that all Subcontractors comply with this requirement.
- e. Within ten working days following the Notice of Award, the Contractor must submit to the City acceptable certificates of insurance, declarations page(s) and endorsements evidencing that the Contractor has the required insurance in effect and will maintain it throughout the performance of the Work, and beyond as applicable, the following kinds and amounts of insurance:

1. The minimum limits of the Commercial General Liability (including bodily injury, personal injury and property damage) insurance shall be:
  - \$2,000,000 per occurrence
  - \$2,000,000 aggregate

If the work to be performed involves any excavation, the policy shall include an endorsement that affords coverage for explosion, collapse and underground hazards.

2. If the work to be performed involves vehicles or vehicular equipment, the Automobile insurance limit shall be:
  - \$2,000,000 per accident for bodily injury and property damage

3. Automobile coverage should be at least as broad as Insurance Services Automobile Liability form CA 0001 Code 1 (“any auto”). No endorsement may be attached limiting the coverage. If coverage provided is anything less than ‘any auto’ additional information, such as schedule of covered autos or proof of personal auto liability coverage, may be required by the City.

4. Worker’s Compensation Insurance. Proof of Workers Compensation and Employers Liability insurance as required by any applicable law, regulation or statute, including the provisions of Division IV of the Labor Code of the State of California, and any act or acts amending it. Worker’s compensation insurance must be for Statutory Limits and must cover the full liability of the Contractor. The Contractor’s Employer’s Liability Insurance must be in an amount no less than \$1,000,000.00 per occurrence. The workers’ compensation policy must be endorsed with a waiver of subrogation. The insurance company, in its endorsement, must agree to waive all rights of subrogation against the City, its officers, officials, employees, agents and volunteers for losses paid under the terms of such policy.

5. Umbrella/Excess Policy. The limits of insurance required under this Contract may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.

f. Additional Requirements

- i. Endorsements must add the City, its officials, officers, employees, agents and volunteers as an additional insured (“Additional Insured”). Examples of City approved insurance forms are included in this package. If the Contractor provides policy pages or broad forms of endorsement the insurance carrier will be asked to sign, initial and date all applicable sections of the document which conveys coverage to the City.
- ii. It shall be a requirement under this Contract that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional

Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the name insured; which ever greater.

- iii. iii. The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and Contractor will not seek contribution from the City of Healdsburg's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.
- iv. The Contractor shall provide the City with a 30 day written notice of any reduction or cancellation of such insurance required to be furnished by the Contractor; and include a severability of interest clause acceptable to the City and if requested by the City.
- v. If an Umbrella or Excess Policy is used to satisfy the requirements, than an email or language stating such on the certificate must be provided from the insurance carrier/broker and that Umbrella/Excess Policy 'follows form' or is 'continuous' to the General liability and/ Auto liability policy in addition to the required endorsement.
- vi. The City will provide examples of approved standard and preferred forms of endorsements If the Contractor's insurance carrier chooses to use forms other than the City's approved forms , such forms shall be subject to the prior approval of the City. If the Contractor provides policy pages instead of an endorsement the insurance agent/broker will be asked to sign, initial and date all applicable sections of the policy that meet the City's insurance requirements.
- g. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City, The City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right exercise later.

**Contractor's failure to provide insurance certificates and endorsement forms that are acceptable to the City within ten (10) days of notice of award of contract shall:**

- i. constitute a failure to complete the "Contract Documents Checklist" as described Page 35.
  - (ii) entitle the City to rescind any contract award
  - (iii) result in a forfeiture of Contractor's bid bond or other form of bid security.
- h. Contractor must continue to provide approved forms of insurance certificates, declarations page(s) and endorsements that meet the requirements of Section 8-1.07 of the Contract Documents for 1-year following recordation of a Notice of Completion or other form of notice of project completion provided by City.

CITY APPROVED STANDARD CERTIFICATE FORM

<b>CERTIFICATE OF INSURANCE</b>			ISSUE DATE (MM/DD/YYYY)		
<b>CITY OF HEALDSBURG (the "City")</b>					
<b>PRODUCER</b>			THIS CERTIFICATE OF INSURANCE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
			<b>COMPANIES                      BEST'S RATING</b>		
			COMPANY LETTER <b>A</b> _____		
			<b>B</b> _____		
			<b>C</b> _____		
			<b>D</b> _____		
			<b>E</b> _____		
<b>INSURED</b>					
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	ALL LIMITS IN THOUSANDS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT. <input type="checkbox"/> OTHER _____				GENERAL AGGREGATE \$ _____ PRODUCTS-COMP/OPS AGGREGATE \$ _____ PERSONAL & ADVERTISING INJURY \$ _____ EACH OCCURRENCE \$ _____ FIRE DAMAGE (ANY ONE FIRE) \$ _____ MEDICAL EXPENSE (Any One Person) \$ _____
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT \$ _____ BODILY INJURY (PER PERSON) \$ _____ BODILY INJURY (PER ACCIDENT) \$ _____ PROPERTY DAMAGE \$ _____
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ _____ AGGREGATE \$ _____
	<input type="checkbox"/> WORKER'S COMPENSATION & EMPLOYER'S LIABILITY				STATUTORY \$ _____ EACH ACCIDENT \$ _____ DISEASE-POLICY LIMIT \$ _____ DISEASE-EACH EMPLOYEE \$ _____
	<b>PROPERTY INSURANCE</b> <input type="checkbox"/> COURSE OF CONSTRUCTION				AMOUNT OF INSURANCE \$ _____
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / RESTRICTIONS / SPECIAL ITEMS					
<b>THE FOLLOWING PROVISIONS APPLY:</b>					
1. None of the above-described policies will be canceled until after 30 days' written notice has been given to the City at the address indicated below.					
2. The City, its officials, officers, employees, volunteers and agents are added as insureds on all liability					
<b>CERTIFICATE HOLDER / ADDITIONAL INSURED</b>			<b>AUTHORIZED REPRESENTATIVE</b>		
CITY OF HEALDSBURG 401 GROVE STREET HEALDSBURG, CA 95448			SIGNATURE		
			TITLE		
			PHONE NO.		



CITY APPROVED STANDARD ENDORSEMENT FORM

<b>INSURER</b> <b>POLICY NO.</b> <b>ENDORSEMENT NO:</b>	<b>ISO FORM CG 20 26 11 85 (MODIFIED)</b> <b>COMMERCIAL GENERAL LIABILITY</b>
EXHIBIT 1-C	
<b>THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY</b> <b>ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION</b>	
This endorsement modifies insurance provided under the following:	
<b>COMMERCIAL GENERAL LIABILITY COVERAGE PART.</b>	
<b>SCHEDULE</b>	
<b>Name of Person or Organization:</b>	
(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement).	
WHO IS INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned or rented to you.	
<b>Modifications to ISO for CG 20 26 11 85:</b>	
1) "Operation" includes the named insured's products.	
2) The insured scheduled above includes the Insured's officers, officials, employees, volunteers and agents.	
3) This insurance shall be primary as respects the insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.	
4) The insurance afforded by this policy shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Agency.	
Signature - Authorized Representative _____	
Address _____	
_____	
_____	

CITY APPROVED STANDARD ENDORSEMENT FORM

<b>AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT</b>		
<b>For the City of Healdsburg</b>	ENDORSEMENT NO.	ISSUE DATE (DD/MM/YYYY)
<b>PRODUCER</b>	<b>POLICY INFORMATION</b>	
	Insurance Company:	
	Policy No:	
	Policy Period: (from) _____ (to) _____	
	LOSS ADJUSTMENT EXPENSE <input type="checkbox"/> Included in Limits	
	<input type="checkbox"/> In Addition to Limits	
Telephone _____	<input type="checkbox"/> Deductible <input type="checkbox"/> Self-Insured Retention (check which) of \$ _____	
<b>NAMED INSURED</b>	APPLICABILITY. This insurance pertains to the operation and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here p in which case only the following specific agreements and permits with the City are covered:  City AGREEMENTS / PERMITS _____	
<b>TYPE OF INSURANCE</b>	<b>OTHER PROVISIONS</b>	
<input type="checkbox"/> COMMERCIAL AUTO POLICY		
<input type="checkbox"/> BUSINESS AUTO POLICY		
<input type="checkbox"/> OTHER _____		
<b>LIMIT OF LIABILITY</b>	<b>CLAIMS:</b> Underwriter's representative for claims pursuant to this insurance.	
\$ _____ per accident, for bodily injury and property damage.	Name: _____	
	Address: _____	
	Telephone: ( _____ ) _____	
In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:		
2. CONTRIBUTION NOT REQUIRED. As respects work performed by or on behalf of the City the insurance afforded by this policy shall: (a) be primary insurance as respects the City, its officers, officials, employees, volunteers and agents; or (b) stand in an unbroken chain of coverage excess of the Named Insured's primary coverage. Any insurance or self-insurance maintained by the City its officers, officials, employees, volunteers and agents shall be excess of the Named Insured's insurance and not contribute with it.		
3. CANCELLATION NOTICE. With respect to the interests of the City this insurance shall not be cancelled, except after thirty (30) days prior written notice by receipted delivery has been given to the City		
4. SCOPE OF COVERAGE. This policy affords coverage at least as broad as: (1) If primary, Insurances Services Office form number CA0001 (Ed.1/87), Code 1 ("any auto"); or (2) If excess, affords coverage which is at least as broad as the primary insurance forms referenced in the preceding section (1).		
Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.		
<b>ENDORSEMENT HOLDER</b>	<b>AUTHORIZED REPRESENTATIVE</b>	
	<input type="checkbox"/> Broker / Agent <input type="checkbox"/> Underwriter <input type="checkbox"/> _____	
<b>THE CITY OF HEALDSBURG</b> <b>401 GROVE STREET</b> <b>HEALDSBURG, CA 95448</b>	I _____ (print / type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.	
	Signature _____	
	Telephone ( _____ ) _____	Date Signed _____



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS FOR OTHER  
PARTIES WHEN REQUIRED IN WRITTEN  
CONSTRUCTION AGREEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

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

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
  - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

REPRODUCTION

## 8-1.09 Indemnities

- a. The Contractor will take all responsibility for the Work, and will bear all losses and damages directly or indirectly resulting to the Contractor, any subcontractors engaged in performance of the Work, the City, its officials, officers, employees, agents, volunteers and consultants, and to third parties on account of the performance or character of the Work, unforeseen difficulties, accidents, or occurrences of other causes predicated on active or passive negligence of the Contractor or of any subcontractor engaged in performance of the Work. To the fullest extent permitted by law the Contractor will indemnify, defend and hold harmless the City, its officials, officers, employees, agents, volunteers and consultants from and against any or all loss, liability, expense, claims, costs (including costs of defense), suits, and damages of every kind, nature and description (including, but not limited to, penalties resulting from exposure to hazards in violation of the California Labor Code) directly or indirectly arising from the performance of the Work ("Claims"). The Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.
- b. The Contractor will indemnify, defend and hold harmless the City, the City's officials, officers, employees, volunteers, agents and the Engineer and the Architect for all liability on account of any patent rights, copyrights, trade names or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the City that any such charges have been paid.
- c. The Contractor assumes all liability for any accident or accidents resulting to any person or property as a result of inadequate protective devices for the prevention of accidents in connection with the performance of the Work. The Contractor will indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, volunteers and consultants from such liability.
- d. The defense and indemnification obligations in this Contract are undertaken in addition to, and shall not in any way be limited by the insurance obligations contained in this Agreement. Sections 8-1.08 or 8-1.09. The Contractor will defend, with legal counsel reasonably acceptable to the City, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorney's fees incurred. The Contractor will promptly pay any judgment rendered against the City, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the City, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the City, its officials, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.

- e. Subject to the requirements of Section 5 of the General Provisions, the Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims related to damage to surface or underground facilities caused by the Contractor or any of the Contractor's privities or agents.
- f. The Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims, including any fines or other penalties, related to failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with provision 12-1.04 of the Contract. The City may withhold from amounts due or that may become due the Contractor under this Contract amounts that equal or are estimated to equal the amount of Claims, including fines, resulting from failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with provision 12-1.04 of the Contract.
- g. In accordance with California Civil Code Section 2782(a), nothing in the Contract will be construed to indemnify the City for its sole negligence, willful misconduct, or for defects in design furnished by City. In accordance with California Civil Code Section 2782(b), nothing in the Contract will be construed to impose on the Contractor or to relieve the City from liability for the City's active negligence. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.
- h. Contractor's and subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Contract for the full period of time allowed by law.
- i. The defense and indemnification obligations of this Contract are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Contract.

**8-1.10 Licenses/Permits.** The Contractor must, without additional expense to the City, obtain all licenses, permits and other approvals required for the performance of the Work. This would include a valid City Business license.

**8-1.11 California Labor Code Requirements.**

- a. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work will constitute a legal day's work under the Contract.
- b. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted

upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

- c. The Contractor and its subcontractors will forfeit as a penalty to the City \$25 for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 et seq.
- d. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and will be made available on request. The Contractor and subcontractors engaged in the performance of the Work must pay no less than these rates to all persons engaged in performance of the Work.
- e. In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the Work must comply Labor Code Section 1775 which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty will be determined by the Labor Commissioner. The Contractor or subcontractor must pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:
  1. The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
  2. The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
  3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.
  4. Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Work and any amounts due pursuant to California Labor Code Section 1813.
  5. In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the Work, must 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 performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the City and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776.

- f. In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- g. In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

**8-1.12 Laws and Ordinances.** The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the Technical Specifications or Project Plans is to be construed to permit Work not conforming to these codes:

- National Electrical Safety Code, U. S. Department of Commerce
- National Board of Fire Underwriters' Regulations
- California Building Standards Code as adopted by the City
- Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- Industrial Accident Commission's Safety Orders, State of California
- Regulations of the State Fire Marshall (Title 19, California Code of Regulations) and Applicable Local Fire Safety Codes
- Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.
- Federal, state, and local air pollution control laws and regulations applicable to the Contractor and/or the Work.

**8-1.13 Guaranty.** The Contractor guarantees all of the Work for one year from the date the City accepts the Work. Upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship the Contractor must make

good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the City. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the Contract or at law or equity, the City may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor, and/or call on the Contractor's maintenance bond for the cost of making good such defects and for the City's reasonable legal costs, if any, of recovering against the bond. The Contractor will remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the City.

**8-1.14 Assignment of Unfair Business Practice Claims.** In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the City all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Contract. This assignment will be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.

## SECTION 9 Measurement and Payment

**9-1.01 F.O.B.** All shipments must be F.O.B. destination to the Work site and/or other sites indicated in the Contract Documents. The Contract Price is all-inclusive (including sales tax). There will be no additional compensation paid for containers, packing, unpacking, drayage or insurance.

### 9-1.02 Payment

- a. The Contractor must submit to the Engineer his or her partial payment estimate on the 15th day of the month. When the 15th falls on a weekend or holiday submittal must be on the first workday prior to the 15th. The partial payment estimate must be a verified application for payment and schedule of values supported by a statement showing all materials actually installed during the preceding month and the cost of labor actually expended in the performance of the Work. The Contractor must also provide information with the payment that includes bid item identification and % complete/remaining. Unless otherwise provided in the Contract Documents, no allowances or payments will be made for material or equipment not placed at the Work site.
- b. Within ten (10) days after the issuance of the Notice to Proceed, the Contractor shall furnish to the City a detailed Schedule of Values giving a complete breakdown of large lump sum prices and items which include numerous subdivisions of work. The Contractor and City shall jointly review the Schedule of Values and make any adjustments in value allocations if, in the opinion of the City, changes are necessary to establish fair and reasonable allocation of values for the Work components. Front end loading will not be permitted. If, in the City's judgment, more detail (i.e. more items of work) is necessary, the Contractor shall add the additional items identified by the City. The City may also require reallocation of Work components from items in the preliminary schedule if such are allocation is necessary. The Contractor shall submit any necessary revisions for the completed Schedule of Values within 15 days from the Notice to Proceed. The costs indicated in making up this breakdown will be used as a basis for partial payments and shall not be considered as fixing a basis of additions or deductions from the contract.
- c. To be eligible for payment the Contractor's applications for payment must be accompanied by certified payroll reports, including "Statement of Non-Performance" for periods where no Work was performed. Certified payroll shall be prepared in accordance with California Labor Code Section 1776 and the Contract for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months. Applications for payment will not be processed without certified payroll reports.
- d. In accordance with California Public Contract Code Section 20104.50, the City will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven days after receipt by the City, along with a written description of the reasons why the application is improper. The Contractor's failure to submit a schedule by the time specified in Section 3-1.08, or its submission of a schedule to which the City has taken any uncorrected exception, will serve as a basis for returning an application for payment in its entirety.

- e. Unless the Contractor has elected to post securities in lieu of retention in accordance with California Public Contract Code Section 22300 and the Contract, and the Contractor and the City have executed an escrow agreement in accordance with the Public Contract Code and the Contract, the City will make progress payments to the Contractor in accordance with applicable law in the amount of ninety-five (95) percent of the value of the labor actually performed and the material incorporated in the Work as specified in Contractor's verified application for payment upon approval by the City's authorized representative(s). Payment of progress payments will not be construed as acceptance of the Work performed. If the Contractor has elected to post securities in lieu of retention in accordance with Public Contract Code Section 22300 and the Contract and the Contractor and the City have executed an escrow agreement in accordance with the Public Contract Code and the Contract, the City will make payments to the Contractor or the Contractor's escrow agent in accordance with such escrow agreement.
- f. Wherever the estimated quantities of Work to be done and materials to be furnished on a unit price basis under this Contract are specified in any of the Contract Documents, including the proposal, such quantities are specified for purposes of comparing bids, and the right is expressly reserved, except as otherwise expressly provided, to increase or diminish such quantities as may be deemed reasonably necessary or desirable by the Engineer to complete the Work. No such increase or diminution will be a basis for claims for adjustments in the Contract Price other than adjustments necessary to reflect the impacts of such changes in quantities based on the applicable contract prices and/or pursuant to Section 4 of this Contract.
- g. In accordance with California Public Contract Code Section 20104.50, if the City fails to make a progress payment within thirty (30) days of receipt of an undisputed, properly submitted application for payment, the City will pay the Contractor interest equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of days available to the City to make a payment without incurring an interest obligation pursuant to this provision and California Public Contract Code Section 20104.50 will be reduced by the number of days, if any, by which the City has delayed return of an application for payment beyond the seven day return requirement set forth in Section 9-1.02(d).
- h. The City will pay the Contractor's final invoice in accordance with applicable law and this Section 9 following acceptance of the Work provided that:
  - i. The Contractor has furnished evidence satisfactory to the City that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have been released by valid release or release bond acceptable to the City.
  - ii. No claim has been presented to the City by any person based upon any acts or omissions of the Contractor or any subcontractor engaged in the performance of the Work.
  - iii. No other claim or dispute exists under the Contract or applicable law concerning payment of the Contractor's final invoice and/or release of the Contract retention.
  - iv. The Contractor has filed with the City the Maintenance Bond provided in the Contract Documents with duly notarized signatures of an authorized representative of the Contractor and an attorney-in-fact of an admitted surety

insurer acceptable to the City and such Maintenance Bond binds the Contractor as Principal and the Surety in accordance with its terms in the amount of 10% of the final Contract Price.

**9-1.03 Non-Allowable Direct Charges.** The following costs are not allowable direct charges under the Contract. The following costs may only be paid under the Contract, if at all, as part of any allowance for contractor overhead and/or profit established under the Contract.

- a. Labor costs in excess of applicable prevailing wages pursuant to the Contract and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for contractor and subcontractor employees engaged in the performance of the Work, or in excess of the labor costs specified in provision 4-1.05 of this Contract in the case of cost impacts involving items for which the Contract Documents do not specify prices, and for which no lump sum amount has been approved by the City. However, in no event will allowable direct labor charges under the Contract include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.
- b. Superintendent labor and clerical labor.
- c. Bond premiums
- d. Insurance in excess of that required under Section 8.8
- e. Utility costs
- f. Work Site office expenses
- g. Home office expenses.
- h. Permit or license costs

**9-1.04 Retention.** The City or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:

- a. Defective work not remedied or uncompleted work.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure to properly pay subcontractors or to pay for material or labor.
- d. Reasonable doubt that the Work can be completed for the balance then unpaid.
- e. Damage to another contractor.

- f. Damage to the City.
- g. Damage to a third party.
- h. Delay in the progress of the Work, which, in the City's judgment, is due to the failure of the Contractor to properly expedite the Work.
- i. Liquidated damages or other charges that apply to the Contractor under the Contract.
- j. Any other lawful basis for withholding payment under the Contract.

**9-1.05 Securities in Lieu of Retention.**

- a. In accordance with Public Contract Code Section 22300, except where federal regulations or polices do not permit substitution of securities, the Contractor may substitute securities for any moneys withheld by the City to ensure performance of the Work. At the Contractor's request and expense, securities equivalent to the amount withheld will be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, who will then pay those moneys to the Contractor under the terms of an Escrow for Security Deposit agreement. The Escrow for Security Deposit agreement is provided in the Contract Documents. Upon satisfactory completion of the Work, the securities will be returned to the Contractor.
- b. Alternatively, at the Contractor's request and expense, the City will pay retentions earned directly to the escrow agent. At the Contractor's expense, the Contractor may direct investment of the payments into securities. Upon satisfactory completion of the Work, the Contractor will receive from the escrow agent all securities, interest, and payments received by the escrow agent from the City pursuant to this provision and the terms of the Escrow for Security Deposit agreement. The Contractor will, within 20 days of receipt of payment, pay to each subcontractor the respective amount of interest earned, less costs of retention withheld from each Subcontractor, on monies withheld to ensure the Contractor's performance of the Work.
- c. Securities eligible for investment in accordance with this provision include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City.
- d. The Contractor will be the beneficial owner of any securities substituted for moneys withheld and will receive any interest thereon.

## **SECTION 10 Project Acceptance and Closeout**

**10-1.01 Occupancy.** The City reserves the right to occupy or use any part or parts or the entire of the Work before the Work is fully performed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the City's rights under the Contract, any Contract bonds, or at law or equity. Occupancy or use will not waive the City's rights to assess liquidated damages in accordance with Section 7 after the date of such occupancy or use.

**10-1.02 Work Completion and Final Inspection.** When the Contractor considers the Work is completed, the Contractor will submit written certification to the Engineer specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the City's representative and are operational. The City and/or the City's authorized representatives will make an inspection to verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Engineer. Upon receiving a notice of correction, the City or the City's authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within 15 working days after the issuance of the punch list

### **10-1.03 Work Acceptance.**

- a. All finished Work will be subject to inspection and acceptance or rejection by the City, the Engineer, and the Architect or other government agencies having jurisdiction over the Work. Final acceptance of the Work will be at the discretion of the City.
- b. The City will accept the Work in writing only when the Work has been completed to the City's reasonable satisfaction. Progress payments will in no way be construed as acceptance of any part of the Work.
- c. In evaluating the Work, no allowance will be made for deviations from the Technical Specifications, Project Plans or other Contract Documents unless already approved in writing in accordance with the requirements of Section 4, above.
- d. The fact that the Work and materials have been inspected from time to time and that progress payments have been made does not relieve the Contractor of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.

## SECTION 11 Remedies and Disputes

**11-1.01 Failure to Correct Work.** Within ten (10) working days of receiving written notice from the City describing Work that is defective or that is otherwise not in accordance with the requirements of the Contract and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the City written notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the City's notice and the Contract. If the Contractor and/or the Contractor's sureties do not give the City written notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the City's notice, then the City may correct such work and/or have such work corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other remedies that the City may have under the Contract and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the contractor.

### 11-1.02 Termination.

- a. In accordance with California Public Contract Code Section 7105, in addition to all other available remedies that the City may have under the Contract, and at law or equity, the City may terminate the Contract:
  1. If the Contractor or any of its subcontractors engaged in the performance of the Work fails to timely perform the Work and/or any of the Contractor's material obligations under the Contract Documents, including but not limited to submission of an acceptable schedule, that have accrued except for due to reasons beyond the control of the Contractor pursuant to the Contract Documents.
  2. If the Contractor is adjudged bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its creditors.
  3. If the Contractor or any of the subcontractors engaged in the performance of the Work persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials for the timely completion of the Work.
  4. If the Contractor fails to make prompt payment to subcontractors engaged in the performance of the Work or for material or labor used in the performance of the Work in accordance with the Contract Documents and applicable law.
  5. If the Contractor or any subcontractors engaged in the performance of the Work persistently disregards laws or ordinances applicable to the performance of the Work, or the instructions of the City, the Engineer, the Architect, or other authorized representatives of the City.
  6. For any reason or for no reason, at the City's sole discretion.

- b. If the City intends to terminate the Contractor's control of the Work for any of the reasons specified in Section 11-1.102(a) 1 through 5, above, the City will immediately serve written notice to the Contractor and its sureties in accordance with the Contract Documents. Notice of the City's intent to terminate the Contract will be given by registered or certified mail and specify the grounds for termination, the required cure and the time by which the cure must be effected. Upon receipt of notice of the City's intent to terminate the Contract for any of the reasons specified in Section 11-1.102(a) 1 through 5, the Contractor will have ten (10) days from receipt of the notice or a longer time specified in the notice to cure its default. If the Contractor does not affect the required cure by the time specified in the notice, the City will issue a written notice of termination to the Contractor and its sureties by registered or certified mail. The notice of termination will specify: that upon receipt of the notice the Contractor's right to perform or complete the Work, including on behalf of the Contractor's sureties, is terminated; that the Contractor's sureties will have the right to take over and complete the Work and perform all of the Contractor's remaining obligations that have accrued under the Contract; and that if the Contractor's sureties do not both give the City written notice of their intention to take over and perform the Contract and commence completion of the Work and performance of all of the Contractor's remaining obligations that have accrued under the Contract within ten (10) days after receipt of notice of termination that the City may declare the Contractor's sureties in default and take over the completion of the Work or have the Work completed for the account and at the expense of the Contractor and its sureties, and the Contractor and its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other available remedies that the City may have under the Contract Documents and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.
- c. Upon termination of the Contractor's control of the Work for any of the reasons specified in Section 11-1.102(a) 1 through 5, the Contractor will, if so directed by the City, immediately remove from the Work site any and all materials and personal property belonging to the Contractor which have not been incorporated in the Work and the Contractor and its sureties will be liable upon their bond for all damages caused the City by reason of the Contractor's failure to complete the Work.
- d. Upon termination of the Contractor's control of the Work for any of the reasons specified in Section 11-1.102(a) 1 through 5, above, the City reserves the right to refuse tender of the Contractor by any surety to complete the Work.
- e. If the City completes or has completed any portion of, or the whole of the Work, following termination of the Contractor's control of the Work for any of the reasons specified in Section 11-1.102(a) 1 through 5, above, the City will neither be liable for nor account to the Contractor or the Contractor's sureties in any way for the time within which, or the manner in which such Work is performed, or for any changes made in such Work or for the money expended in satisfying claims and/or suits and/or other obligations in connection with completing the Work. If, following termination of the Contractor's control of the Work for any of the reasons specified in Sections Section 11-1.102(a) 1 through 5, above, the unpaid balance of the Contract Price exceeds the expense of completing the Work, including compensation for additional legal, managerial and administrative services and all other amounts due for the completion of the Work and/or satisfaction of claims of the City and/or others arising out of the Contract and any other charges that apply to the Contractor under the Contract, the difference will be paid to the Contractor.

If such expenses of completing the Work exceed the unpaid balance of the Contract Price, the Contractor or its sureties will pay the difference to the City.

- f. If the Contract or Contractor's control of the Work is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor.
- g. In accordance with California Government Code Section 4410, in the event a national emergency occurs, and public work being performed by contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the City and the Contractor may, by written agreement, terminate the Contract. In accordance with California Government Code Section 4411, such an agreement will include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party will pay to the other or any other person, under the facts and circumstances in the case. Compensation to the Contractor will be determined on the basis of the reasonable value of the work done, including preparatory work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Work for which there is a separate contract price, the Contract price will control. The parties may in any other case adopt the Contract price as the reasonable value of the work or any portion of the work done.

### **11-1.03 Disputes.**

- a. In accordance with California Public Contract Code Section 20104.2, the following procedures apply to claims of \$375,000 or less between the Contractor and the City:
  - 1. The claim must be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
  - 2. For claims of less than fifty thousand dollars (\$50,000), the City will respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.
  - 3. If additional information is thereafter required, it will be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.
  - 4. The City's written response to the claim, as further documented, will be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
  - 5. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City will respond in writing

to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.

6. If additional information is thereafter required, it will be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.
  7. The City's written response to the claim, as further documented, will be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
  8. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City will schedule a meet and confer conference within 30 days for settlement of the dispute.
  9. Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed will be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
  10. This section does not apply to tort claims and nothing in this article is intended nor will be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- b. In accordance with California Public Contract Code Section 20104.4, the following procedures apply to civil actions to resolve claims of \$375,000 or less between the City and the Contractor:
1. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court will submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process will provide for the selection within 15 days by both parties of a disinterested third person as mediator, will be commenced within 30 days of the submittal, and will be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

2. If the matter remains in dispute, the case will be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) will apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
  3. Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article will be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators will be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses will be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event will these fees or expenses be paid by state or county funds.
  4. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment must, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
  5. The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.
- c. In accordance with California Public Contract Code Section 20104.6:
1. The City will not fail to pay money as to any portion of a claim, which is undisputed except as otherwise provided in the Contract.
  2. In any suit filed under Public Contract Code Section 20104.4 concerning this Contract, the City will pay interest at the legal rate on any arbitration award or judgment. Such interest will accrue from date the suit was filed.

## **SECTION 12 Additional Provisions**

### **12-1.01 Description of Work.**

The Work in general consists of installation of a new HVAC system, application of roof coating, water proofing and gasket replacement of trellis brackets and windows, installation of new restroom counters and plumbing, misc. ADA repairs and electrical modifications and other such items of work as are required to complete the Project in accordance with this Contract, the Project Plans and Technical Specifications.

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

Incidental items of construction necessary to complete the Work in a satisfactory and acceptable manner as shown on the Project Plans and as provided for in the Technical Specifications and not specifically referred to in this section, shall be considered part of the Work and will be understood to be furnished by the Contractor.

### **12-1.02 Construction Limitations.**

The Contractor will be expected to conduct his or her operations in a manner; which creates a minimum to the natural vegetation and landscape. Ingress and egress must be via the existing driveways. Care must be exercised to avoid hazards that may cause injury to persons, animals or property either during working hours or after work hours, which will include dust control, backfilling trenches immediately following pipe laying and temporary fencing as required. Excavation made under this Contract must be backfilled before leaving the work for the night.

The Contractor will be responsible for obtaining permission from the property owners for any construction outside of the Work site or easements as shown on the plans. Equipment will be restricted to the immediate area of construction; pipe trenches will be backfilled as soon as possible.

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

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

### **12-1.03 Order of Work.**

Order of work must be in accordance with Section 5-1.05, "Order of Work", of the Caltrans Standard Specifications, which section is made a part of this Contract.

### **12-1.04 Storm Water Pollution Prevention.**

The Contractor must perform the Work in compliance with all applicable requirements of the California State Water Resources Control Board pursuant to Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 ("General Permit") adopted pursuant to regulations adopted by the U.S. Environmental Protection Agency (USEPA) on November 16, 1990 and codified in 40 Code of Federal Regulations Parts 122, 123, 124. The General Permit applies to storm water discharges from construction sites that disturb land equal to or greater than one acre, and to construction activity that results in soil disturbances of less than one acre if the construction activity is part of a larger common plan of development that encompasses one or more acre of soil disturbance or if there is significant

water quality impairment resulting from the activity. The General Permit requirements that may apply to the Contractor's performance of the Work include, but are not limited to:

- a. Development and implementation of a Storm Water Pollution Prevention Plan ("SWPPP") that specifies Best Management Practices ("BMPs") that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.
- b. Elimination or reduction of non-storm water discharges to storm sewer systems and other waters of the nation.
- c. Inspection of all BMPs.

Portions of the Work that may be subject to the General Permit include, but are not limited to clearing, grading, stockpiling and excavation.

Prior to commencing performance of the Work, the Contractor must prepare and file a Notice of Intent to obtain coverage under the General Permit, a vicinity map, and the applicable fee, with the California State Water resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, California 95812-1977.

Prior to commencing performance of the Work the Contractor must also prepare an SWPPP in accordance with all applicable requirements of the General Permit and submit the SWPPP to the Engineer for approval.

The Contractor must also develop and implement a monitoring program to verify compliance with the General Permit.

The SWPPP must include a Work site map. Geometric equations, notes, details, and all data not related to water pollution control work shall be removed to provide clarity. A copy of the Project Plans must be used as a base plan, with the pertinent stage of construction shown as an overlay to accurately reflect Project site conditions at various phases of construction.

The Contractor must revise and update the SWPPP whenever there is a change in construction operations that may affect the site drainage patterns or discharge of pollutants to surface waters, ground waters, or a separate municipal storm sewer system.

Any fines, damages, Work delays or other impacts that result from failure of the Contractor or privities or agents of the Contractor to fully comply with the requirements of the General Permit or to fully implement the SWPPP will be solely the responsibility of the Contractor.

The Contractor must keep a copy of the General Permit, together with updates and revisions, at the Project site and provide copies of the SWPPP at the request of the City.

#### **12-1.05 Maintaining Traffic and Pedestrian Operations.**

The Contractor must so conduct his or her operations so as to cause the least possible obstruction and inconvenience to public traffic. Unless otherwise approved by the Engineer, all traffic must be permitted to pass through the Work.

Due to the need to accommodate and minimize inconvenience to the public, unless expressly specified or approved in writing by the Engineer, no road closures will be permitted. Public vehicular and pedestrian traffic must be allowed to travel through the Work area with an absolute minimum of interruption or impedance unless otherwise provided for in the Contract or

approved in writing by the Engineer. The Contractor must make provisions for the safe passage of pedestrians around the area of Work at all times.

Residents affected by construction must be provided passage and access through the Work area to the maximum extent possible. Where existing driveways occur on the street, the Contractor must make provisions for the trench crossings at these points, either by means of backfill or by temporary bridges acceptable to the Engineer, so that the length of shut-down of any driveway is kept to a minimum. In addition, all driveways must be accessible at the end of each workday, and no driveway or property access may be closed for more than four (4) hours during the workday. Access to driveways, houses, and buildings along the road or street must be as convenient as possible and well maintained, and all temporary crossings must be maintained in good condition. To minimize the need for and complexity of detours, not more than one crossing or street intersection or road may be closed at any one time without the written approval of the Engineer.

The Contractor must provide multiple, advance written notices of closures to all affected property owners in a form approved by the Engineer.

Except as otherwise approved by the Engineer, the stockpiling or storing of material in City streets or right of way shall be prohibited. Where this is unavoidable, all such materials must be piled or stored in a manner that will not obstruct sidewalks, driveways, or pedestrian crossings. Gutters and drainage channels must be kept clear and unobstructed at all times. All such materials shall be stored and handled in a manner that protects City streets, sidewalks, or other facilities from damage.

Where approved in advance by the Engineer, the Contractor must construct and maintain detours for the use of public traffic at his or her own expense. Failure or refusal of the Contractor to construct and maintain detours so approved at the proper time will be a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity. Such remedies include, but are not limited to, termination pursuant to Section 11.

Throughout performance of the Work the Contractor must construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for the public and private traffic at all times including Saturdays, Sundays and holidays.

The Contractor will be responsible for keeping all emergency services, including the Healdsburg police and fire departments informed of obstructions to, or detours around any public or private roads caused by reasons of his or her operations.

The Contractor must comply with the State of California, Department of Transportation Manual of warning signs, lights, and devices for use and performance of work within the job site.

The fact that rain or other causes, either within or beyond the control of the Contractor, may force suspension or delay of the Work, shall in no way relieve the Contractor of his or her responsibility of maintaining traffic through the Project and providing local access as specified in this section. The Contractor must, at all times, keep on the job such materials, force and equipment as may be necessary to keep roads, streets and driveways within the Project open to traffic and in good repair and shall expedite the passage of such traffic, using such force and equipment as may be necessary.

Full compensation for conforming to the requirements of this section will be deemed included in the prices paid or the various Contract items of Work and no additional allowances will be made therefore.

#### **12-1.06 Public Safety.**

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

No pedestrian or vehicle access way may be closed to the public without first obtaining permission of the Engineer.

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

Nothing in this section will be construed to impose tort liability on the City or Engineer.

#### **12-1.07 Preconstruction Conference.**

A pre-construction conference will be scheduled, at which time the Contractor must present his or her proposed work schedule in accordance with Section 3-1.08 of the General Provisions, information concerning offsite yards, subcontractors, location of disposal and stock pile areas, and traffic control plans. All such schedules will be subject to the approval of the Engineer and the applicable agencies

#### **12-1.08 Owner Notification.**

The Contractor must notify all property owners and businesses affected by the Work at least 48 hours before Work is to begin. The notice must be in writing in the form of a door hanger, and must indicate the Contractor's name and phone number, type of work, day(s) and time when Work will occur. Notices must be reviewed in advance and approved by the Engineer.

#### **12-1.09 Emergency Service Providers Notifications.**

The Contractor must furnish the name and phone number of the Safety Supervisor appointed in Section 13 to the City Police Department dispatcher for contact in the event of an emergency and shall keep such information updated as required to provide 24-hour phone access.

#### **12-1.10 Clean up.**

Section 4-1.02 of the Caltrans Standard Specifications is made a part of this Contract

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

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

#### **12-1.11 Obstructions.**

Section 15, "Existing Highway Facilities", of the Caltrans Standard Specifications, is made a part of this Contract; except that, references to the following sections of the Standard Specifications are hereby deleted; such sections are not a part of this Contract: 9-1.03, "Force Account Payment," 15-3.03, "Measurement," 15-3.04, "Payment," and 16-1.07, "Adjustment of Lump Sum Item."

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

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

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

#### **12-1.12 Hours of Work.**

Unless otherwise specified herein, all construction activity, except for emergency situations, will be confined to Monday through Friday between the hours of 7:30 a.m. and 6:00 p.m., to minimize nuisances to local residents. Mufflers and/or baffles will be required on all construction equipment to control and minimize noise. The Contractor must comply with all applicable noise regulations in the City's Municipal Code.

Saturday, Sunday, holidays and overtime shall not be regarded as working days. Work shall not be allowed on non-working days without the expressed approval of the Engineer. The Contractor shall make a request for approval in writing with the stipulation (implied or expressed) that the Contractor shall pay for all overtime labor charges at the rate of \$100 per hour per inspector and/or resident engineer. All overtime labor charges shall be deducted from the final payment along with any liquidated damages.

Work necessary for the proper care and protection of work already performed or in case of emergency may be allowed without permission of the Engineer.

#### **12-1.13 Dust Control.**

The Contractor must furnish all labor, equipment, and means required and carry out effective measures wherever and as often as necessary to prevent its operation from producing dust in amounts damaging to property, cultivated vegetation, or domestic animals, or causing a nuisance. The Contractor will be responsible for any damage resulting from any dust originating from the performance of the Work. The use of water resulting in mud on streets, sidewalks, or driveways, will not be permitted as a substitute for sweeping or other methods of dust control. The Contractor may not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.

Dust control must conform to the provisions in Section 10, "Dust Control", of the Caltrans Standard Specifications, which section is made a part of this Contract, except that references to Section 7 of the Standard Specifications are hereby deleted. Except as otherwise expressly provided in this Contract, Section 7 of the Standard Specifications is not a part of this Contract.

In lieu of the provisions of the second paragraph in Section 10-1.04, "Payment", of the Caltrans Standard Specifications, no separate payment will be made to the Contractor for controlling dust, whether caused by construction traffic or by public traffic only. Full compensation for dust control will be considered as included in the Contract Price and no additional compensation will be allowed therefore.

#### **12-1.14 Water For Construction And Dust Control.**

Construction water is available free-of-charge from the recycled water dispensing facilities located at 280 Kinley Road and at 340 Foreman Lane. The Contractor shall apply for a Recycled Water Trucking Permit through the City of Healdsburg and shall meet the requirements of the permitting process. The Contractor shall comply with all permit requirements for the use and handling of recycled water. Construction water shall not be drawn from any other source within the City of Healdsburg.

The Contractor is prohibited from operating gate valves, fire hydrants, pumps or any other components of the City water system. The Contractor must contact the City's utilities staff, a minimum of twenty-four (24) hours in advance, to operate these or any other components on the City water system.

#### **12-1.15 Sanitary Provisions.**

The Contractor must maintain such camps, as he or she may establish for the housing and feeding of the laborers, employed by him or her for the Work, in accordance with the status and general health laws of the State of California pertaining to the sanitation of dwelling and camps and in conformity with such rules and regulations pertaining to labor camps, as have been or may hereafter be prescribed by the State Board of Health or by the Commission of Emigration and Housing of California acting in conjunction with said State Board of Health.

#### **12-1.16 Protection And Restoration Of Vegetation.**

Trees, lawns, shrubbery and vegetation that are not to be removed must be protected from damage or injury. Existing trees, shrubs, and other plants, that are not to be removed and are injured or damaged by reason of the Contractor's operations, must be replaced by the Contractor in accordance with the requirements in Section 20-4.07, "Replacement", of the Caltrans Standard Specifications. Section 20-4.07 of the Caltrans Standard Specifications is made a part of this Agreement.

When it is necessary to excavate adjacent to existing trees, shrubs, or hedges, the Contractor must use all possible care to avoid injury to the trees, shrubs, or hedges and their roots. No roots or limbs two inches (2") or larger in diameter may be cut without the express approval of the Engineer.

All roots two inches (2") in diameter and larger left in place must be wrapped with burlap to prevent scarring or excessive drying. When it is necessary to cut limbs and branches of trees to provide clearance for equipment used in construction, the Contractor must repair the damaged areas by properly painting with an emulsified asphalt type seal. All cuts through 1/2" or larger roots and limbs must be hand trimmed and cleanly cut before being repaired.

#### **12-2.01 Cultural Resources.**

In accordance with the National Historic Preservation Act of 1966 (U.S.C. 470), the following procedures are implemented to insure historic preservation and fair compensation to the Contractor for delays attendant to the cultural resources investigation. Contractor hereby agrees to comply with these procedures.

#### **12-2.02 Surplus Material.**

All material removed or excavated during the course of construction will be surplus. All surplus material will be the property of the Contractor and be disposed of outside the right-of-way, unless the City elects to salvage certain objects that are determined to be of historical interest. The City reserves the right of ownership of all objects that it elects to salvage, and the Contractor must protect such objects from subsequent damage until delivered unto the care of the owner.

#### **12-2.03 Historical Finds.**

In the event potential historical, architectural, archeological, or cultural resources (hereinafter called cultural resources) are discovered during subsurface excavations at the site of construction, the following procedures will apply:

1. The Contractor must immediately notify the Engineer and stop any Work which may jeopardize the find pending an investigation of its significance;
2. The Engineer will select a qualified archeologist (such as through the Northwest Information Center at Sonoma State University or other official contact) and wait for an archaeologist to complete an evaluation of significance before continuing Work in that area.
3. The Engineer will supply the Contractor with a "Stop Work Order" directing the Contractor to cease all portions of the Work that the Engineer determines may impact the find. The "Stop Work Order" will be effective until a qualified archaeologist assesses the value of the potential cultural resources. The "Stop Work Order" will contain the following:
  - a. A clear description of the Work to be suspended;
  - b. Any instructions regarding issuance of further orders by the Contractor for materials services;
  - c. Guidance as to action to be taken regarding subcontractors;
  - d. Any direction to the Contractor to minimize costs; and
  - e. Estimated duration of the temporary suspension.
4. If the archaeologist determines the potential find is a bona fide cultural resource, the Engineer may extend the duration of the "Stop Work Order" in writing, and if so the "Stop Work Order" will remain in effect and Work subject to the "Stop Work Order" may not resume work until authorized by the Engineer.

#### **12-2.04 Cultural Resources Defined.**

Possible indicators that a cultural resource has been found include, but are not limited to the following:

1. Prehistoric-era archaeological site indicators: obsidian tools, tool manufacture waste flakes, grinding and other implements, dwelling sites, animal or human bones, fossils, and/or locally darkened soil containing dietary debris such as bone fragments and shellfish remains;

2. Historic-era site indicators: ceramic, glass, and/or metal.

**12-2.05 Engineer's Discretion.**

Once possible cultural resources are found at the Work site, the Engineer may use discretion to continue the work, regardless of the cultural resource find, if the Engineer determines that there are overriding considerations such as the instability of the excavation site, that there are weather or other conditions which would preclude leaving the site exposed, or if the site would be unsafe to workers who would retrieve cultural resource items from therein.

E E C C O O P P Y

## SECTION 13 Safety Rules and Requirements

### 13-1.01 General

- a. Within ten (10) working days following notice of award the Contractor must submit to the City a safety program for the Work site (“Contractor’s Safety Program”) and provide evidence that the Contractor’s safety policies and procedures relevant to the Work.
- b. The Contractor shall insure that its employees and subcontractors, as well as visitors and others brought onto the Work site under the authority of the Contractor, shall, at all times, observe all applicable Local, State and Federal safety requirements as well as the safety rules and requirements contained in this Contract including, but not limited to, the Contractor’s Safety Program.
- c. In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions at the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the Contractor and the Contractor’s privities and any other entities engaged in the performance of the Work will be “employers” responsible for furnishing employment and a place of employment that is safe and healthful for all employees of any such entities engaged in the performance of the Work. Neither the City nor its officials, officers, employees, agents, volunteers or consultants will be “employers” pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor’s privities or other entities engaged in the performance of the Work.
- d. The Contractor agrees with respect to the Work, and the Work site, the Contractor will be responsible for not creating hazards and for having hazards corrected and/or removed, for taking appropriate, feasible steps to protect the Contractor’s employees from such hazards and that the Contractor has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers.
- e. The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the Work site is maintained and the Work is performed in a safe manner in accordance with the Contract and applicable law. If the Contractor damages City equipment or property, the Contractor shall report the incident to the Engineer on or before the next calendar day and provide such information as necessary for the City to evaluate the damage.
- f. The Contractor shall submit a written request to the Engineer in order to obtain keys or other devices to gain access to City facilities. Keys and other devices shall not be copied or otherwise replicated and shall remain in the possession of the Contractor and its employees or subcontractors at all times and shall be returned to the City when no longer required to complete the Work.

- g. The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 et seq. of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.
- h. Examination, inspection, investigation, and review by the City and or its employees and representatives, of the Contractor's Safety Plan or the Contractor's performance of the Work will not constitute review or approval of the adequacy of the Contractor's safety measures in, on, or near the Work site and shall not relieve the Contractor of any of the Contractor's obligations under the Contract and applicable law to ensure that the Work site is maintained and the Work is performed in a safe manner.

#### **13-1.02 Safety Supervisor; Hazardous Substances**

- a. The Contractor shall designate an individual who is qualified and authorized to supervise and enforce compliance with the Contractor's Safety Program ("Safety Supervisor"). The Contractor shall notify the Engineer in writing prior to the commencement of the Work of the name and contact information of the Safety Supervisor. The Safety Supervisor shall be either a full-time employee of the Contractor or a contracted safety consultant with experience and/or professional certifications indicating experience in construction safety. The Safety Supervisor shall provide the City, upon request, with weekly safety inspection reports identifying hazards found and corrective actions taken. The Safety Supervisor shall also be responsible for supervising compliance with applicable safety requirements on the Work site and to develop and implement safety training for all job personnel. The City shall have the authority, but not the duty, to require the Contractor replace the Safety Supervisor if the Supervisor's performance is judged by the City to be improper or inadequate.
- b. Prior to beginning the Work, the Contractor shall review the City's Hazard Communication Program. In addition, if the Contractor brings any substance onto City property, other than gasoline or diesel fuel, for which a manufacturer has prepared a Materials Safety Data Sheet (*MSDS*), in quantities greater than 25 pounds, 200 cubic feet, or five gallons; or any substance defined in Cal/OSHA regulations as "acutely hazardous;" or if the Contractor's work activities may expose City employees to any of the substances described above, the Contractor shall first complete and submit to the Engineer a "Report of Use/Storage of Hazardous Substances on City Property" form (*form(s) provided at Project's Pre-Construction meeting*).

#### **13-1.03 Non-Compliance with Safety Rules and Regulations**

- a. In the event the Contractor fails to comply with applicable Local, State and Federal safety requirements, or the safety rules and requirements contained in this Contract including the provisions of the Contractor's Safety Plan, the City reserves the right to (i) notify the Contractor of its failure to comply, and the reasons therefore, and require that the Contractor immediately undertake, at Contractor's own expense, all actions necessary to bring the Contractor and/or the Project into compliance and (ii) exercise the

right to suspend all or part of the Work if the Contractor fails or refuses to undertake and complete such corrective action within the time specified in the notice.

- b. No extension of time or additional compensation will be granted as a result of any suspension of the Work and any issuance by the City of any notice or suspension order shall not operate to waive or otherwise diminish the (i) Contractor's obligations under this Contract to provide a safe Work site or (ii) City's right to pursue or enforce any remedy, power or right under the Contract or otherwise available at law.

#### **13-1.04 Accidents and Safety Emergencies**

- a. In accidents or emergencies affecting the safety or protection of persons, the Work, the Work site, or property adjacent thereto, the Contractor shall immediately act to prevent threatened damage, injury or loss and notify the Engineer as soon as possible of the facts and circumstances surrounding the emergency including the involvement of any emergency responders (police, fire, medical, etc.).
- b. The City reserves the right to conduct an investigation of the accident or emergency either in conjunction with, or separate of, the Contractor, and the Contractor shall provide the City all access necessary to permit the City to perform a full and complete investigation, the scope of which shall be at the sole discretion of the City.
- c. Within 24 hours of accidents or emergencies involving in-patient hospitalization or a fatality, the Contractor shall provide the Engineer with a completed Contractor's Injury/Fatality Incident Report (*form(s) provided at Project's Pre-Construction meeting*). The Contractor shall also notify the Engineer in writing of any claims brought against the Contractor, or any subcontractor, judicial or otherwise, related to any such injuries and/or fatalities including a copy of such claim(s).

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**SECTION 14- Technical Specifications**

EEC COPY

**Section 15- Project Plans**

**Separate Attachment**

EECCOPY